

Supreme Court, U. S.

FILED

JUN 29 1976

MICHAEL RODAK, JR., CLERK

## APPENDIX

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# Supreme Court of the United States

October Term, 1975

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**No. 75-823**

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RAYMOND BELCHER,

*Petitioner,*

v.

CASEY D. STENGEL, et al.,

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**ON WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT**

**VOLUME 1 OF 2**

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**Petition for Certiorari filed December 10, 1975**

**Certiorari Granted April 5, 1976**

**IN THE  
Supreme Court of the United States**

**October Term, 1975**

**No. 75-823**

**RAYMOND BELCHER,**  
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Civil Action No. 72-67

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**CASEY D. STENGEL, et al.,**  
*Plaintiffs,*

**v.**

**RAYMOND L. BELCHER, et al.,**  
*Defendants.*

**RELEVANT DOCKET ENTRIES**

- 2-28-72** Complaint filed. Summonses executed for service by MSCO. (extra copies of the complaint filed in folder numbered "2", for the "John Does".).
- 3-22-72** Stipulation, defendants given until April 19, 1972 to move or plead, filed.
- 5- 2-72** Agreement for Extension of Time to Move or Plead filed: until May 31st, 1972 for defendant, Raymond L. Belcher.
- 5- 8-72** Agreement for Extension of Time to file Answer Memoranda filed: plaintiffs may file Answer Memoranda on or before June 8th, 1972.
- 5-26-72** Motion of Defendant, Raymond L. Belcher, with memo attached, filed.
- 3-19-73** Opinion and Order filed: the defendants' motion to dismiss is **DENIED**. (cc John Lewis/Dale Crawford).
- 3-30-73** Answer of all Defendants, filed.



- 6-25-73 Defendants' statement of issues filed.
- 6-10-74 Note: Jury trial commenced before the Hon. Joseph P. Kinneary.
- 6-18-74 Verdict in favor of plaintiff Casey D. Stengel, actual damages in the amount of \$800,000.00 and punitive damages at \$1,000.00, filed.
- 6-18-74 Verdict in favor of plaintiff Charles Ruff, Admin. in the amount of \$19,000.00 and punitive damages in the amount of \$1,000.00, filed.
- 6-18-74 Verdict in favor of the plaintiff Timothy Noe, Admin., actual damages in the amount of \$9,000.00 and punitive damages in the amount of \$1,000.00, filed.
- 6-19-74 Judgment—The plaintiff, Casey D. Stengel recover of the defendant, Raymond L. Belcher, the sum of \$800,000.00 actual damages and the sum of \$1,000.00 punitive damages, a total of \$801,000.00, with interest thereon at the rate of 6% as provided by law and his costs of action; The plaintiff, Charles Ruff, Administrator of the Estate of Robert D. Ruff, Deceased, recover of the defendant, Raymond L. Belcher, the sum of \$19,000.00 actual damages and the sum of \$1,000.00 punitive damages, a total of \$20,000.00, with interest thereon at the rate of 6% as provided by law and his costs of action; That the plaintiff Timothy Noe, Administrator of the Estate of Michael J. D. Noe, Deceased, recover of the defendant, Raymond L. Belcher, the sum of \$9,000.00 actual dam-

- ages and the sum of \$1,000.00 punitive damages, a total of \$10,000.00, with interest thereon at the rate of 6% as provided by law and his costs of action, filed.
- 6-28-74 Motion of deft, Raymond L. Belcher, for a judgment notwithstanding the verdict, a new trial and/or an order altering or amending the judgment filed.
- 9-11-74 Order—Plaintiff's motion for substitution as a party plaintiff Granted. Albert J. Leshy as Admin. is hereby substituted as party plaintiff for Timothy Noe. Defendants motion for a judgment notwithstanding the verdict, motion for a new trial and for an altering or amending of the judgment Denied, filed. Copy to Lewis Taylor and Hughes.
- 10- 9-74 Notice of Appeal, filed. (\$250.00 Appeal Bond Deposited in Registry)
- 11-15-74 Transcript filed.
- 11-15-74 Record certified to USCA6th, copy of certificate to Lewis/Taylor/City Atty.
- 3- 4-75 Certificate returned from USCA6th, given #75-1075 on 1-22-75.
- 10-20-75 Order filed: from USCA6th, this AFFIRMS the decision of the District Court.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO**

**Eastern Division**

**No. 72-67**

**CASEY D. STENGEL, individually and on behalf of  
all persons similarly situated**

**295 Arcadia Avenue  
Columbus, Ohio 43202**

**and**

**CHARLES RUFF, Administrator  
of the Estate of**

**ROBERT D. RUFF, deceased  
186 Clinton Street  
Columbus, Ohio 43202**

**and**

**TIMOTHY NOE, Administrator  
of the Estate of**

**MICHAEL J. D. NOE, deceased  
1430 Ombersley Lane  
Columbus, Ohio 43221**

**Plaintiffs**

**vs.**

**RAYMOND L. BELCHER, individually  
and as a Police Officer of**

**The City of Columbus  
Police Department  
120 West Gay Street  
Columbus, Ohio 43215**

**and**

**DWIGHT JOSEPH, individually**

**and as Police Chief for  
The City of Columbus  
Police Department  
120 West Gay Street  
Columbus, Ohio 43215**

**and**

**JOHN HAWK, individually  
and as a Police Officer of**

**The City of Columbus  
Police Department  
120 West Gay Street  
Columbus, Ohio 43215**

**and**

**FRANCIS B. SMITH, individually  
and as a Police Captain of**

**The City of Columbus  
Police Department  
120 West Gay Street  
Columbus, Ohio 43215**

**and**

**ROBERT TAYLOR, individually  
and as a Police Captain of**

**The City of Columbus  
Police Department  
120 West Gay Street  
Columbus, Ohio 43215**

**and**

**RICHARD O. BORN, individually  
and as a Police Captain of**

**The City of Columbus  
Police Department  
120 West Gay Street  
Columbus, Ohio 43215**



and

EARL BELCHER, individually  
and as Police Lieutenant of  
The City of Columbus  
Police Department  
120 West Gay Street  
Columbus, Ohio 43215

and

THE CITY OF COLUMBUS, OHIO,  
a municipal corporation of  
The State of Ohio  
City Hall  
90 West Broad Street  
Columbus, Ohio 43215

and

JOHN DOE-1, JOHN DOE-2, JOHN DOE-3,  
JOHN DOE-4, JOHN DOE-5, JOHN DOE-6,  
JOHN DOE-7, JOHN DOE-8, JOHN DOE-9,  
JOHN DOE-10, JOHN DOE-11, JOHN DOE-12,  
Police and Administrative Officials of  
The City of Columbus, whose identities are unknown  
Police Department  
120 West Gay Street  
Columbus, Ohio 43215

and

DETECTIVE SGT. P. HOPKINS, individually  
and as a Police Officer of  
The City of Columbus  
Police Department  
120 West Gay Street  
Columbus, Ohio 43215

and

JAMES NEWELL, individually  
and as a Police Officer of  
The City of Columbus  
Police Department  
120 West Gay Street  
Columbus, Ohio 43215

and

E. R. WOODS, individually  
and as a Police Officer of  
The City of Columbus  
Police Department  
120 West Gay Street  
Columbus, Ohio 43215

and

E. YOUNG, individually  
and as a Police Officer of  
The City of Columbus  
Police Department  
120 West Gay Street  
Columbus, Ohio 43215

and

M. HARDIN, individually  
and as a Police Officer of  
The City of Columbus  
Police Department  
120 West Gay Street  
Columbus, Ohio 43215

Defendants



### COMPLAINT

1. Jurisdiction of this Court is invoked under the Fourteenth Amendment, United States Constitution and Title 28, United States Code Sections 1331 and 1343 and Title 42, United States Code Sections 1983 and 1985.

2. The matter in controversy exceeds the sum or value of Ten Thousand Dollars, exclusive of interest and costs.

### FIRST CLAIM

3. During all times herein mentioned, Plaintiff, Casey D. Stengel and Plaintiffs' decedents, Robert D. Ruff and Michael J. D. Noe, were citizens of the United States residing in the City of Columbus, County of Franklin, and State of Ohio, and Plaintiff, Casey D. Stengel, is of full age. Plaintiff, Charles Ruff, is the duly qualified and acting Administrator of the Estate of Robert D. Ruff, and brings this action on behalf of the wife and the next of kin of said decedent who would be entitled to inherit under the Ohio statutes of descent and distribution. Plaintiff, Timothy Noe, is the duly qualified and acting Administrator of the Estate of Michael J. D. Noe, and brings this action on behalf of the next of kin of said decedent, Michael J. D. Noe, who would be entitled to inherit from Michael J. D. Noe, pursuant to the Ohio statutes of descent and distribution.

4. During all times mentioned herein, defendant, Dwight Joseph, was the duly appointed, qualified and presently acting Chief of Police in charge of the police force of the City of Columbus, Ohio.

5. During all times mentioned herein, defendants, Raymond L. Belcher, John Hawk, Francis B. Smith,

Robert Taylor, Richard O. Born, Earl Belcher, Detective Sgt. P. Hopkins, James Newell, E. R. Woods, E. Young, M. Hardin and John Doe defendants, one through twelve, were duly appointed, qualified and acting police officers or administrative officials of the Police Department of the City of Columbus, a municipal corporation of the State of Ohio, and were agents of the said City acting or purporting to act in the course of their employment and engaged or purported to be engaged in the performance of their duties as police officers or administrative officials of said City and acting pursuant to orders, directives and regulations of said Police Department and orders and directives from defendant, Dwight Joseph, Police Chief of the City of Columbus, and all the conduct of all the defendants in connection with facts alleged in this Complaint has been ratified and condoned by defendant, The City of Columbus, through acts and conduct of its Chief Police Officer, Dwight Joseph and other duly authorized supervisory personnel. Defendant Police Lieutenant Earl Belcher is believed to be a blood relative of defendant, Raymond L. Belcher.

6. During all times herein mentioned the defendants and each of them were persons acting under color of the statutes, ordinances, regulations, customs and usages of the State of Ohio, County of Franklin, and The City of Columbus.

7. The City of Columbus at all times herein mentioned was the employer of the other defendants and each of them. Said City at all times herein mentioned provided the individual defendants and each of them with an official badge and identification card which designed and described its bearer as Police Chief or officer of said City's Department of Police. During

all times herein mentioned The City of Columbus by police regulation ordered off-duty policemen to carry arms at all times based on the theory that said police officers and police chief are on duty 24 hours of each day.

8. On or about March 1st, 1971, at approximately 1:30 A.M., Plaintiff, Casey D. Stengel, in company with Robert D. Ruff and Michael J. D. Noe who are the other plaintiffs decedents, were all patrons at a tavern known as Jimmie's Cafe, 2338 Summit Street in the City of Columbus, Ohio, when an argument developed between Michael J. D. Noe, one of the other plaintiffs decedent, and two other patrons at the Cafe, Cal Morgan and Agnes Morgan, husband and wife, and as the result of this argument about a bowling game, Agnes Morgan struck said Michael J. D. Noe which then developed into a minor altercation involving words and pushing between Cal Morgan and his wife, Agnes Morgan, on the one hand, and both of Plaintiffs decedents, Robert D. Ruff and Michael J. D. Noe on the other; said activity involving no serious assaults of any kind. Almost immediately after the argument and minor altercation heretofore described commenced, defendant, Raymond L. Belcher, who was out of uniform and in no way identified as a Columbus policeman, and in no way involved in the minor dispute heretofore described, intervened by attacking one of plaintiffs decedent from the rear by grabbing him around the neck from the rear; said intervention by said Raymond L. Belcher being without any notification or attempt to notify anybody in the Cafe that he was an off-duty Columbus policeman and without any attempt by said Raymond L. Belcher to make a police arrest or a citizen's arrest of any kind; at this

point, Plaintiff, Casey D. Stengel, came to the assistance of his companions, the other Plaintiffs decedents by pulling Raymond L. Belcher from the back of one of Casey D. Stengel's said companions and thereafter Plaintiff, Casey D. Stengel, attempted to kick the chemical mace equipment which Raymond L. Belcher pulled from his clothing and which was blinding and choking the people involved from the hand of said Raymond L. Belcher; whereupon still without any warning, identification, or attempt to make an arrest, said Raymond L. Belcher, pulled a gun from his clothing which gun he was ordered and directed to carry as an off-duty Columbus policeman and shot one of the Plaintiff's decedent, to-wit: Robert D. Ruff, which shooting caused the death of said Robert D. Ruff shortly thereafter and in the space of a couple of seconds thereafter, defendant, Raymond L. Belcher, shot Plaintiff, Casey D. Stengel, in the back as he had turned to get away from the chemical spray and to determine if other outsiders in the bar were going to make further intervention in the original argument; said shot by Raymond L. Belcher, hitting, Plaintiff, Casey D. Stengel, in the back in his spinal cord and causing Plaintiff, Casey D. Stengel, immediate and permanent paralysis of the lower part of his body which has caused Plaintiff to lose control of bodily functions of his body below where the bullet entered his spine and that such loss which is permanent includes but is not limited to the power to walk, the power to control his function of urinating and the power to fully control the function of defecation; within seconds thereafter defendant, Raymond L. Belcher, pursued Plaintiff decedent, Michael J. D. Noe, who was trying to depart from the front door



of the Cafe and shot said Plaintiff decedent, Michael J. D. Noe, from which shooting said Michael J. D. Noe died shortly thereafter.

9. Defendant, Dwight Joseph, as Police Chief of defendant, The City of Columbus, enforces the regulations and policies of the City of Columbus requiring off-duty, out-of-uniform police officers to carry guns and he and The City of Columbus knew or in the exercise of ordinary care and foresight should have known that off-duty police would drink hard liquor in bars which would adversely affect their judgment and control and emotions and that unjustified killings and serious injury as heretofore described in this Complaint would occur. By reason of all the foregoing facts heretofore recited in this Complaint, defendants, Raymond L. Belcher, Dwight Joseph and The City of Columbus acting under color of law and under the customs and usages of the Municipal Corporation of Columbus, Ohio, have deprived Plaintiff, Casey D. Stengel, of rights, privileges and immunity secured to him by the Constitution and Laws of the United States and particularly his rights to equal protection of the laws and to due process of law as guaranteed by the Fourteenth Amendment of the Constitution of the United States.

10. Plaintiff, Casey D. Stengel, alleges that as a direct and proximate result of the acts of the defendants, Raymond L. Belcher, Dwight Joseph and the Municipal Corporation of Columbus, Ohio, heretofore described, he has suffered permanent physical disability in that by reason of the shooting in the back in the spine he is permanently paralyzed from the waist down as heretofore described; that he has suffered much discomfort and pain, embarrassment and

that he will be confined to a wheelchair for the rest of his life and that in addition thereto vital functions of his body have been impaired to the extent that he will require permanent care and assistance by others to continue to live; and that he will suffer pain and discomfort and humiliation during the remainder of his life, and that he cannot sleep comfortably in a normal position because of sores that develop on his back and rectal area because of lack of bowel control which sores have since the incident forced him to discontinue an attempt that he has made to proceed with an educational program; that his earning capacity has been totally impaired, that he will continue to incur major expenses for medical care and treatment as he has in the past; that prior to the incident heretofore described Plaintiff, Casey D. Stengel, had honorably performed his military obligation to the United States having attained the rank of sergeant in Vietnam and having received the Purple Heart and two Bronze Stars for combat activity and that he had been honorably discharged from his military obligations and that after brief employment at the United States Post Office, had applied for admission for education at Ohio State University and had been accepted and would have started his college education the spring quarter of 1971 had not the incident heretofore described occurred. Plaintiff further alleges that prior to this incident he was 22 years of age and in excellent health and had a normal life to look forward to including association with a four-year old son and that by reason of the facts heretofore described defendants, have in effect, taken 90% of his life.

11. WHEREFORE, Plaintiff, Casey D. Stengel, claims damages of the defendants, Raymond L. Bel-



cher, Dwight Joseph and The City of Columbus in the amount of ONE MILLION DOLLARS as compensatory damages and in an amount of FIVE HUNDRED THOUSAND DOLLARS as punitive damages in the First Claim herein.

### SECOND CLAIM

12. Plaintiff, Casey D. Stengel, incorporates and realleges paragraphs numbered one through nine of this Complaint as if fully rewritten herein.

13. Plaintiff, Casey D. Stengel, alleges that all of the named defendants participated in a conspiracy in connection with the incident heretofore described which was intended to deny this Plaintiff equal protection of the laws and due process of law and that this Plaintiff was injured and deprived of rights which are his under the Constitution of the United States, said conspiracy being an attempt by all the defendants to whitewash the incident by covering up the true story of what had occurred and as a protection and defense for the unlawful act of defendant, Raymond L. Belcher, filing unfounded charges against this Plaintiff of assault with intent to kill when in fact no such assault occurred and when in fact this Plaintiff was not armed with any weapon and when in fact this Plaintiff was shot in the back in connection with this incident. Additional and specific overt acts in furtherance of this conspiracy are as follows: (1) failure by Columbus Police to have a determination to the extent of alcohol in Officer Belcher's body at the time of the incident at a time when such determination would have been meaningful; (2) intimidation of witnesses by holding occupants of the Cafe at the time of the incident at the Columbus Police Sta-

tion for four to six hours after the shooting during which time Officer Belcher's girlfriend who was not immediately taken to Police Headquarters as were the other occupants in the Cafe at the incident, was permitted to return to her apartment where she was met by an Officer Hawk with whom she discussed the incident and then was taken to Police Headquarters for a formal statement; (3) intimidation of witnesses who were with the Plaintiff and Plaintiffs decedents prior to their visit to Jimmie's Cafe at the time of the incident in question; (4) preparing a tentative report that determined the cause of death of the two plaintiffs after less than 24 hours and announcing it to the news media which in effect usurped the function of the County Coroner of Franklin County; (5) giving a long series of incomplete and inaccurate reports of this incident to news media which tended to deprive Plaintiff, Casey D. Stengel, of his right to a fair trial on the false charges filed against him as a result of the attempt to whitewash the incident and protect Officer Raymond L. Belcher from responsibility for his unlawful acts; (6) announcing publicly for the first time after this incident a prior commendation allegedly given Officer Raymond L. Belcher for restraint in the use of force in another unrelated incident; and (7) giving conflicting reports to news media all of which were designed to justify the actions of defendant, Raymond L. Belcher.

14. Plaintiff, Casey D. Stengel, alleges that the conspiracy heretofore described was to obstruct justice by giving special protection to a fellow police officer, to-wit: Raymond L. Belcher, and was entered into and continued with intent to deny Plaintiff, Casey D. Stengel, and both of the plaintiffs' decedents equal

protection of the laws and deprive Plaintiff, Casey D. Stengel, and the other plaintiffs of their rights to due process of law and further, Plaintiff, Casey D. Stengel, alleges that as part of the conspiracy heretofore described, Det. Sgt. P. Hopkins filed a false charge of assault with intent to kill which said Raymond L. Belcher knew was false as Plaintiff, Casey D. Stengel, was unarmed and was shot in the back. Plaintiff, Casey D. Stengel, further alleges that he has suffered humiliation and deprivation of his liberty for brief periods during procedures in connection with the charge about many of which no fair attempt was made to notify him and has suffered humiliation and embarrassment by actions of the police in arresting him as a fugitive from the foregoing charge after prior notice to the news media when the police department knew or should have known with the exercise of any reasonable diligence that a paralyzed man was not a fugitive and when in fact Plaintiff, Casey D. Stengel, had been in Franklin County at all times since the incident, received regular treatment and care at Riverside Hospital, Columbus, Ohio, and at Dodd Hall, Ohio State University, both as a patient and an out-patient, that Casey D. Stengel's whereabouts was easily ascertained from the Franklin County Welfare Department from which he was receiving assistance for medical expenses and other expenses. Plaintiff, Casey D. Stengel, further alleges that he has suffered damages by reason of incurring expenses for counsel to defend the false charge which has been filed in bad faith and as part of an attempt to bargain with him for a release of any claims against defendant, Raymond L. Belcher, and defendant, The City of Columbus, which is all part of the pattern of conspiracy

to protect a fellow police officer in trouble and deny an ordinary citizen due process of law and equal protection of the laws by obstructing justice and intimidating witnesses.

15. WHEREFORE, Plaintiff, Casey D. Stengel, prays for damages in the Second Claim herein against all the defendants in the amount of ONE HUNDRED THOUSAND DOLLARS as compensatory damages and for FIVE HUNDRED THOUSAND DOLLARS as punitive damages and that on final hearing all of the defendants be permanently enjoined from harassing and interfering with the civil liberties of this Plaintiff.

### THIRD CLAIM

16. Plaintiff, Charles Ruff, Administrator of the Estate of Robert D. Ruff, deceased, incorporates and realleges paragraphs numbered one through nine of this Complaint and further alleges that this plaintiff's decedent like plaintiff, Casey D. Stengel, for all the reasons given in paragraphs one through nine of the Complaint was deprived of rights, privileges and immunities secured to him by the Constitution and laws of the United States and particularly the right to equal protection of the laws and to due process of law as guaranteed by the Fourteenth Amendment of the Constitution of the United States.

17. Plaintiff, Charles Ruff, Administrator, alleges that Robert D. Ruff was unarmed and not guilty of any conduct or attack on any person during the incident heretofore described in the Complaint and his killing occurred because of drinking by Raymond L. Belcher and his intervention in a minor argument as heretofore described in the Complaint and Ray-



mond L. Belcher's sudden panic when Casey D. Stengel intervened after the sudden attack by Raymond L. Belcher as heretofore described in this Complaint.

18. Plaintiff, Charles Ruff, Administrator, alleges that Robert D. Ruff's wife and next of kin have suffered pecuniary damages in the amount of ONE HUNDRED THOUSAND DOLLARS by reason of his wrongful death of Robert D. Ruff.

19. WHEREFORE, Plaintiff, Charles Ruff, Administrator of the Estate of Robert D. Ruff, prays damages against defendants, Raymond L. Belcher, Dwight Joseph, and The City of Columbus in the amount of ONE HUNDRED THOUSAND DOLLARS and costs.

#### FOURTH CLAIM

20. Plaintiff, Charles Ruff, Administrator of the Estate of Robert D. Ruff, incorporates and realleges paragraphs numbered twelve, thirteen and fourteen of the Complaint as if fully rewritten herein and further states that the conspiracy described by incorporating and realleging paragraphs twelve, thirteen, fourteen and fifteen of the Complaint was entered into and continued with intent to deny the Estate of Robert D. Ruff equal protection of the laws and due process of law and to obstruct justice and thus defeat the wrongful death claim of the Estate of Robert D. Ruff.

21. WHEREFORE, Plaintiff, Charles Ruff, Administrator of the Estate of Robert D. Ruff, prays damages against all the defendants named in this Complaint in the amount of TWENTY THOUSAND DOLLARS in this Fourth Claim.

#### FIFTH CLAIM

22. Plaintiff, Timothy Noe, Administrator of the Estate of Michael J. D. Noe, deceased, incorporates and realleges paragraphs numbered one through nine of this Complaint and further alleges that this Plaintiff's decedent like Plaintiff, Casey D. Stengel, for all the reasons given in Paragraphs one through nine of the Complaint was deprived of rights, privileges and immunities secured to him by the Constitution and laws of the United States and particularly the right to equal protection of the laws and to due process of law as guaranteed by the Fourteenth Amendment of the Constitution of the United States.

23. Plaintiff, Timothy Noe, Administrator, alleges that Michael J. D. Noe was unarmed and not guilty of any conduct or attack on any person during the incident heretofore described in this Complaint and that the killing of Michael J. D. Noe occurred because of drinking by Raymond L. Belcher and his intervention in a minor argument as heretofore described in the Complaint and Raymond L. Belcher's total panic when Plaintiff, Casey D. Stengel, intervened as heretofore described after the attack by Raymond L. Belcher as heretofore described in this Complaint.

24. Plaintiff, Timothy Noe, Administrator of the Estate of Michael J. D. Noe, alleges that the next of kin of Michael J. D. Noe have suffered pecuniary damages in the amount of THIRTY THOUSAND DOLLARS by reason of the wrongful death of Michael J. D. Noe as heretofore described.

25. WHEREFORE, Timothy Noe, Administrator of the Estate of Michael J. D. Noe, prays damages against defendants, Raymond L. Belcher, Dwight



Joseph and The City of Columbus in the amount of THIRTY THOUSAND DOLLARS and his costs in this Fifth Claim.

#### SIXTH CLAIM

26. Plaintiff, Timothy Noe, Administrator of the Estate of Michael J. D. Noe, incorporates and realleges paragraphs twelve, thirteen and fourteen of the Complaint as if fully rewritten herein and further states that conspiracy described by such incorporated and realleged paragraphs was entered into and continued with intent to deny the Estate of Michael J. D. Noe equal protection of the laws and due process of law and with intent to obstruct justice and thus defeat the wrongful death claim of the Estate of Michael J. D. Noe heretofore described.

27. WHEREFORE, Plaintiff, Timothy Noe, Administrator of the Estate of Michael J. D. Noe, prays damages against all the defendants named in this Complaint in the amount of TWENTY THOUSAND DOLLARS in this Sixth Claim and for his costs.

#### SEVENTH CLAIM

28. For a Seventh Claim the Plaintiff, Casey D. Stengel, incorporates and realleges paragraphs numbered one through twenty-seven of this Complaint as if fully rewritten herein.

29. Pursuant to the provisions of Rule 23 (c) (4), Federal Rules of Civil Procedure, Plaintiff, Casey D. Stengel, brings the Seventh Claim on behalf of himself and all the other citizens of the City of Columbus, Ohio, a class of approximately 539,700 persons. Joinder of all members of the class for this claim is impracticable. There are questions of law or fact common to the class.

30. Plaintiff alleges that the City of Columbus, Ohio, by police regulation, requires off-duty policemen to carry arms at all times based on the theory that police officers and the police chief are on duty 24 hours of each day.

31. As a result of said regulation, police officers of the City of Columbus carry concealed arms at all times even though said officers are not in uniform and are not identifiable to the public as police officers or as persons who are carrying lethal weapons.

32. During the regular eight hour tours of duty of Columbus police officers their conduct is governed by regulations about drinking, and many other regulations about conduct and associations outside their official duties which do not apply during the sixteen hours of a day which are not within their regular tour of duty with the result that a large partially unregulated partially secret, but not an undercover or detective, police force is at large in the city with lethal weapons but without specific purpose of law enforcement at locations and at times and under conditions such as social drinking and rendezvous with members of the opposite sex which tend to impair the ability to exercise proper judgment and impair the ability to perform responsible and effective police work.

33. The aforesaid regulation requiring police officers to carry arms at all times seriously endangers the health, safety and welfare of the citizens of Columbus and endangers the constitutional rights of such citizens to due process of law and equal protection of the laws.

34. The aforesaid regulation exposes the citizens of Columbus to unnecessary danger by creating a situation whereby a citizen might incur serious bodily

harm by refusing to obey the order of an off-duty policeman who is not known to such a citizen to be an officer of the law.

35. The aforesaid regulation instills or tends to instill in the police officers of the City of Columbus a mental attitude of secretiveness, intrigue and authority that is contrary to the health, safety and welfare of the citizens of Columbus and creates an imminent danger to the life and liberty of such citizens and to their rights guaranteed by the United States Constitution.

36. WHEREFORE, Plaintiff, Casey D. Stengel, on behalf of himself as a citizen of Columbus, Ohio, and all other members of such class prays in this Seventh Claim that the City of Columbus, Ohio, and all other defendants herein be permanently enjoined from granting immunity to its police officers from the statutory law of Ohio which prohibits the carrying of concealed weapons when such officers are not in uniform or on a regular tour of duty in the nature of a plain clothes assignment or not performing ordinary and normal duties during the hours of full time, assigned and compensated duty and further prays that defendant, the City of Columbus, be permanently enjoined from enforcing the regulation authorizing its police officers to be armed at all times and authorizing said police officers to carry concealed weapons under color of law while engaged in personal activities.

### DEMAND FOR JURY TRIAL

All Plaintiffs herein demand trial by jury of all claims in the Complaint to which they are entitled to a jury.

JOHN H. LEWIS  
3316 North High Street  
Columbus, Ohio 43202 263-0941  
TRIAL Counsel

CLAYMAN, JAFFY & TAYLOR  
21 East State Street  
Columbus, Ohio 43215 228-6148

By CHARLES E. TAYLOR  
Of Counsel



Civil Action No. 72-67  
**IN THE UNITED STATES DISTRICT COURT  
 FOR THE SOUTHERN DISTRICT OF OHIO**

Eastern Division  
 (Title omitted in printing)

**MOTION OF DEFENDANT,  
 RAYMOND L. BELCHER**

Now comes the defendant, Raymond L. Belcher, and pursuant to Rule 12(B) of the Federal Rules of Civil Procedure, respectfully moves this Court to dismiss the action against him on the grounds that (1) the Court lacks jurisdiction over the subject matter and (2) the Complaint fails to state a claim against him upon which relief can be granted.

Respectfully submitted,

CITY OF COLUMBUS, Department of Law  
 JAMES J. HUGHES, JR., *City Attorney*

By DALE A. CRAWFORD  
*Trial Attorney*

and ROBERT A. BELL  
*Associate Counsel*

*Attorneys for Defendant,*  
 RAYMOND L. BELCHER  
 90 West Broad Street  
 Columbus, Ohio 43215  
 Phone: 461-5680

**MEMORANDUM IN SUPPORT OF MOTION**

Defendant, Raymond L. Belcher, has been joined in this action as an off-duty police officer who was allegedly involved in a shooting which caused the death of two plaintiffs and seriously injured a third.

Paragraph 8 of the plaintiffs' Complaint states in part as follows:

"... Defendant Raymond L. Belcher, who was out of uniform and in no way identified as a Columbus policeman, and in no way involved in the minor dispute heretofore described, intervened by attacking one of plaintiff's decedent from the rear by grabbing him around the neck from the rear; said intervention by said Raymond L. Belcher being without any notification or attempt to notify anybody in the Cafe that he was an off-duty Columbus policeman and without any attempt by said Raymond L. Belcher to make a police arrest or a citizen's arrest of any kind. . ."

Plaintiffs seeks to acquire the jurisdiction of this Court pursuant to Section 1983 of 42 U.S.C.A., which states as follows:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress."

To sustain an action against this defendant under 42 U.S.C.A. §1983, it is incumbent upon the plaintiffs to plead that the defendant was (1) acting under color



of state or local authority and (2) subjected the plaintiff, or caused the plaintiff to be subjected, to a deprivation of his rights guaranteed by the Constitution and the laws of the United States. (*Monroe v. Pape*, 365 U.S. 167 (1961), *York v. Story*, 324 F. 2d 450 (CA 9th, 1963), *Nugent v. Sheppard*, 318 F. Supp. 314 (DC ND Ind., 1970). Plaintiffs have failed to plead that the incident involving the alleged shooting was engaged in by the defendant Raymond L. Belcher while he was acting under color of state or local authority. Not only have plaintiffs failed to plead that the activities took place while defendant Raymond L. Belcher was acting under color of state or local authority, but in the alternative, plaintiffs have affirmatively pleaded that Raymond L. Belcher was *not* acting under color of state or local authority. The Court in *Nugent v. Sheppard*, 318 F. Supp. 314, 316-317 (DC ND Ind., 1970) stated as follows:

"This is not to say that an assault is automatically transmuted into a violation of Constitutional rights simply because the guilty party is a policeman. Obviously a policeman can act in a private, as well as a professional capacity. But when the assault occurs 'in the line of duty'—when the sole relationship between the person guilty of the assault and his victim is the relationship between policeman and citizen — the act is something more than a 'mere' assault."

The District Court in *United States ex rel., Smith v. Heil*, 308 F. Supp. 1063 (DC ED Pa., 1970) was presented with a Civil Rights complaint against two officers who were in plainclothes riding in an unmarked car who purportedly engaged in an unlawful arrest of a parolee. The defendants sought to dismiss the complaint because they were not acting under color of

state law within the meaning of Section 1983 of 42 U.S.C.A. The Court stated at page 1065 of 308 F. Supp. as follows:

"If Stuffle [the defendant police officer] were acting wholly as a private citizen in this alleged assault, and did not use the 'pretense' of his office's legal authority . . . or act under the authority of a policeman's badge' . . . the Civil Rights Act would not provide plaintiff with a vehicle for recovery . . . however, we think that here, plaintiff's allegations that the defendant 'police officers' did in fact purport to 'arrest' him to state a sufficient factual nexus with the requirement of action 'under color' of state law, namely, that the defendants asserted a lawful authority to use force to take plaintiff into custody."

In the case at bar, plaintiffs have pleaded that the defendant, Raymond L. Belcher, was (1) an off-duty police officer (which by definition would purport to mean that at the time he was not engaged in the performance of his duty); (2) that Raymond L. Belcher did not seek to identify himself as a police officer, and (3) that Raymond L. Belcher did not seek to make an arrest at the time of the alleged shooting. (Complaint, ¶8) The arrest of the plaintiff Stengel took place after the alleged shooting (as a result of the incident—not as a cause) by another officer pursuant to an affidavit filed with the Franklin County Municipal Court and not by the defendant, Raymond L. Belcher.

Thus, defendant respectfully submits that the plaintiffs have failed to plead that the alleged shooting by the defendant Raymond L. Belcher, took place under color of state or local authority, and failing in such regard, have not pleaded a necessary requirement to invoke the jurisdiction of this Court under 42 U.S.C.A.

§1983. The Complaint should thus be dismissed against this defendant because (1) the Court lacks jurisdiction over the subject matter and (2) the Complaint fails to state a claim against this defendant upon which relief can be granted.

Respectfully submitted,

CITY OF COLUMBUS, Department of Law  
JAMES J. HUGHES, JR., *City Attorney*

By DALE A. CRAWFORD  
*Trial Attorney*

and ROBERT A. BELL  
*Associate Counsel*

*Attorneys for Defendant,*  
RAYMOND L. BELCHER

(Certificate of Service omitted in printing)

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO**

**Eastern Division**

**Civil Action 72-67**

CASEY D. STENGEL, et al,  
Plaintiffs

vs.

RAYMOND L. BELCHER, et al,  
Defendants

**OPINION AND ORDER**

This matter is before the Court on defendants' motion to dismiss the complaint for failure to state a claim upon which relief can be granted and for lack of jurisdiction over the subject matter.

The twenty-five defendants in this action have filed five separate but related motions.

1. A motion by defendant Raymond Belcher to dismiss the complaint as to him because the Court lacks jurisdiction over the subject matter and because the complaint fails to state a claim against him upon which relief can be granted.
2. A motion by defendant Dwight Joseph to dismiss the action as to him because the Court lacks jurisdiction over the subject matter and because the complaint fails to state a claim against him upon which relief can be granted.
3. A motion by defendant City of Columbus to dismiss the action against it because the Court lacks jurisdiction over the subject matter and because the complaint fails to state a claim against it upon which relief can be granted.



4. A motion on behalf of the twelve John Doe defendants to dismiss the action as to them because the Court lacks jurisdiction over the subject matter and over the person and because the complaint fails to state a claim against them upon which relief can be granted.
5. A motion on behalf of the ten remaining defendants to dismiss the action as to them because the Court lacks jurisdiction over the subject matter and because the complaint fails to state a claim upon which relief can be granted.

This action was commenced under the provisions of Title 42, United States Code, Sections 1983 and 1985. Jurisdiction of the Court is invoked under Title 42, United States Code, Sections 1331 and 1343.

Plaintiff Stengel contends that he was assaulted by defendant Raymond Belcher during a barroom altercation and, as a result of that assault, was paralyzed. The two other plaintiffs were killed. Plaintiffs contend that the remaining defendants conspired to cover up the incident. Defendant Raymond Belcher is a police officer for the City of Columbus. However, he was not officially on duty at the time the assault occurred. The remaining defendants are police officers and supervisory personnel of the Columbus Police Department.

Each of the defendants' motions will be considered separately.

#### 1.

Section 1983 provides that any person who while acting under the color of state law deprives another of any right, privilege or immunity secured by the Constitution or laws of the United States shall be liable to the injured party. Therefore, plaintiffs must

both allege and prove that defendants were acting under color of state law. Defendant Raymond Belcher contends that the complaint should be dismissed as to him because he was not acting under color of state law at the time of the assault.

The Court has carefully examined the allegations in the complaint. The complaint does allege that defendant Raymond Belcher was acting under color of state law. Defendant Belcher contends that since he was not technically on duty when the assault occurred he could not have been acting under the color of state law. However, this is not necessarily true. *See Johnson v. Hackett*, 284 F. Supp. 933 (E.D. Pa. 1968).

Whether or not plaintiff will be able to prove that defendant Raymond Belcher was acting under color of state law is not at issue here. Rather, the motions filed on behalf of this defendant attack the sufficiency of the allegations in the complaint. Viewing the allegations in the complaint in the light most favorable to plaintiff, the Court determines that they are sufficient to withstand a motion to dismiss for lack of jurisdiction over the subject matter and for failure to state a claim upon which relief can be granted.

WHEREUPON, the Court determines that this motion is without merit and it is therefore DENIED.

#### 2.

Defendant Joseph contends that this Court does not have jurisdiction over the subject matter because defendant Raymond Belcher was not acting under the color of state law. However, as noted above, this argument is without merit. Defendant Joseph also contends that the complaint fails to state a claim upon which relief can be granted against him because he cannot

be held liable under the theory of respondeat superior in a §1983 action. There are a number of cases which have adopted this position. *See, e.g., Jordan v. Kelly*, 223 F. Supp. 731 (W.D. Mo. 1963). However, the complaint in this action also alleges that defendant Joseph participated in the conspiracy to cover up this incident. Therefore, the Court believes that he should not be dismissed as a party to this action.

WHEREUPON, the Court determines that the motion is without merit and is therefore DENIED.

### 3.

The City of Columbus contends that since it is not a "person" within the meaning of Section 1983, then it cannot be made a party to this action. In *Monroe v. Pape*, 365 U.S. 167 (1961), the Supreme Court held that in an action for money damages a municipal corporation is not a "person" within the meaning of Section 1983. To this extent, the motion by the City of Columbus is meritorious. However, plaintiffs also seek injunctive relief against the City of Columbus. Plaintiffs seek to enjoin enforcement of a regulation of the Columbus Police Department which requires all off duty officers to carry firearms. This Court does not interpret *Monroe v. Pape*, *supra*, to bar an action against a city for injunctive relief. *See C. Antieau*, Federal Civil Rights Acts §37 (1971).

WHEREUPON, the Court determines that the motion is without merit and it is therefore DENIED.

### 4.

The fourth defense motion is a motion on behalf of the twelve John Doe defendants to dismiss the complaint as to them. The complaint alleges that these

defendants participated in the conspiracy to cover up the incident. For the reasons stated elsewhere in this opinion, the Court believes that the allegations in the complaint are sufficient to withstand a motion to dismiss for lack of jurisdiction over the subject matter and for failure to state a claim upon which relief can be granted. However, these defendants also contend that the complaint should be dismissed as to them for insufficiency of service of process.

The Court notes that these defendants have not been served with process because their real identity has not yet been determined. Therefore, the Court will reserve a ruling on this motion until after the completion of discovery.

### 5.

The last defense motion to dismiss which was submitted by the ten remaining defendants who allegedly participated in the conspiracy to cover up the incident asserts that this Court lacks jurisdiction over the subject matter because defendant Raymond Belcher was not acting under the color of state law at the time of the assault. However, as noted above, this argument is without merit. Defendants further contend that the complaint fails to allege sufficient facts to establish a conspiracy under §1983. The complaint alleges that these defendants attempted to whitewash the incident by filing unfounded charges against plaintiff Stengel, intimidating witnesses, failing to immediately examine defendant Raymond Belcher for intoxication, releasing inaccurate stories to the news media and other actions designed to cover up the incident. While these activities would not be sufficient to sustain a claim for relief under 42 U.S.C. §1985 in that plaintiff has not alleged that the discrimination was class based,



see *Griffin v. Breckenridge*, 403 U.S. 88, 102 (1971), the Court does believe that the allegations in the complaint state a claim for relief under §1983. See *Mizell v. North Broward Hospital District*, 427 F. 2d 468 (5th Cir. 1970).

WHEREFORE, the Court determines that this motion is without merit and it is therefore DENIED.

JOSEPH P. KINNEARY  
Chief Judge  
United States District Court

Civil Action No. 72-67

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO

Eastern Division  
(Title omitted in printing)

ANSWER OF ALL DEFENDANTS

Now come the defendants, Raymond L. Belcher, Dwight Joseph, John Hawk, Francis B. Smith, Robert Taylor, Richard O. Born, Earl Belcher, Detective Sergeant P. Hopkins, James Newell, E. R. Woods, E. Young, M. Hardin, John Does 1-12, and City of Columbus, Ohio, and for their answer state as follows:

First Defense

1. Admit the allegations contained in paragraphs 4, 7, 30 and 31, of the plaintiffs' complaint.
2. Deny for want of knowledge the allegations contained in paragraph 3 of plaintiffs' complaint.
3. Deny the allegations set forth in paragraphs 1-36 of plaintiffs' complaint not previously admitted or denied for want of knowledge.

Second Defense

4. The Court lacks jurisdiction over the subject matter set forth in plaintiffs' complaint.

Third Defense

5. The Court lacks jurisdiction over the person of each and every defendant.

Fourth Defense

6. The Court lacks jurisdiction over the persons of John Does 1-12 because of the insufficiency of the service of process upon said defendants.

**Fifth Defense**

7. The complaint fails to state a claim against the defendants upon which relief can be granted.

WHEREFORE, defendants demand that they be dismissed from this action; that judgment be rendered in their favor, and that costs of this action be taxed to the plaintiffs.

Respectfully submitted,

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(Certificate of Service omitted in printing)

Civil Action No. 72-67

**IN THE UNITED STATES DISTRICT COURT  
 FOR THE SOUTHERN DISTRICT OF OHIO**

**Eastern Division**

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**PRE-TRIAL STATEMENT OF ISSUES**

Pursuant to this Court's request of June 15, 1973, defendants hereby submit a pre-trial statement of the issues as follows:

1. Were the defendants, each and everyone of them, acting under color of state or local law at the time of the incident alleged in the complaint?
2. Did the Court have jurisdiction over the person of John Does 1-12?
3. Was there a conspiracy on behalf of the defendants to deprive plaintiffs of their civil rights?
4. Did the defendant, Raymond L. Belcher, use force against the plaintiffs in self defense?
5. Should the Court enjoin the defendant, City of Columbus, from enforcing an internal rule of the Columbus Police Department which requires off-duty police officers to carry weapons?
6. Were any of the defendants frivolously joined in this suit by the plaintiffs so as to award to such defendants attorney's fees?
7. The issues which were raised in the defendants' motions to dismiss with respect to the jurisdiction of this Court under 42 U.S.C.A., Section 1983 have been



ruled on by this Court, but for purposes of this statement, are to be considered issues still pending before this Court.

Respectfully submitted,

DALE A. CRAWFORD

*Trial Attorney*

(address omitted in printing)

(Certificate of Service omitted in printing)

Civil Action No. 72-67

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO**

**Eastern Division  
(Title omitted in printing)**

**TESTIMONY OF CASEY STENGEL**

[p. 160]

**CASEY STENGEL**

called as a witness on behalf of the plaintiffs, having been first duly sworn, testified as follows:

**DIRECT EXAMINATION**

By Mr. Lewis:

Q. Will you state your name, please. A. Casey Dennis Stengel.

Q. Where do you live, Mr. Stengel?

The Court: You don't have to give the street address. What street do you live on? A. All of a sudden my memory is blank.

Q. (By Mr. Lewis) Is it Agler Road? A. 1900 Agler Road.

Q. You are one of the plaintiffs in this case? A. Yes, sir.

Q. What is your present age? A. Twenty-four — 25.

Q. What is your present age? A. Twenty-five.

Q. On March 1, 1971, what was your age? A. Twenty-two.

Q. On March 1 or February 28, 1971, where did you reside, Mr. Stengel? A. 422 East Lane Avenue, Apartment C.

Q. What was your occupation at that time, if any? [p. 161] A. I was unemployed and enrolled to start at Ohio State University that month in March, spring quarter.

Q. Previous, immediately previous to that time, what had been your employment? A. I was a mail clerk for the U. S. Post Office.

Q. Calling your attention to the late evening of February 28 and the early morning of March 1, 1971, who were your companions at that period of time? A. Well, first Michael Noe came over to my house — my father was there — and then Robert Ruff came over to fix my father's car and left, and then Robert Ruff returned and Dave Jarvis came over.

Q. Are any of these people related to you? A. Robert Ruff is or was my uncle.

Q. That relationship is as an uncle, is through what, your father or your mother? A. My mother.

Q. How old was Robert Ruff at that time? A. Twenty-one.

Q. These individuals met at the residence you were living at and left there at some time? A. Yes.

Q. Do you know approximately what time? A. It was around 11:00 o'clock P.M.

Q. Generally, without going into details, state where you [p. 161A] went, what you did, before you arrived at Jimmie's Cafe which you have heretofore heard evidence or, of course, you know about is the scene of the incident that gives rise to this lawsuit. State generally and briefly what you did. A. We all left; Dave Jarvis, Robert Ruff, Michael Noe and myself.

Q. How many automobiles? A. Two cars.

Q. Go ahead. A. We went to a little tavern on Cleveland Avenue. We had a beer. We left there. We went

to a bar on Hudson Street. We shot a game of bumper pool for a beer. Then we were going to Oldfield's but we decided to go to Jimmie's after Dave Jarvis departed at that time, and Bob Ruff and Michael Noe and myself all went to Jimmie's Cafe.

Q. What day of the week was February 28th? A. Sunday.

Q. What style liquor, what kind of liquor was available up until midnight Sunday? A. Only 3.2 beer.

Q. Did you have anything to drink, any other kind up until that time? A. No, sir.

Q. Any place? A. Other than the beer? [p. 162]

Q. Yes. A. No, sir.

Q. Approximately what time did you arrive at Jimmie's Cafe. A. It would have been around 1:00 o'clock.

Q. How far is this located from your home where you were living at that time? A. Approximately ten blocks.

Q. What kind of a section is it in? A. It is in the Ohio State campus area.

Q. Who were the individuals that were with you when you entered Jimmie's Cafe? A. Robert Ruff and Michael Noe.

Q. Was Jarvis with you at that time? A. No, sir.

Q. As you entered Jimmie's Cafe, did you see anybody in there that you recognized? A. One female by the name of Agnes Morgan. Yes, Agnes Morgan.

Q. How old a lady was she, approximately? A. I would say around 45.

Q. Was she a large or small woman? A. She was a fairly large woman.

Q. At that time did you start a conversation with her, or any one that was with her. [p. 163] A. Yes. We had all known her. She was known to all three



of us and she introduced her husband to us, Kyle Morgan.

Q. He was with her at that time? A. Yes, sir.

Q. Mr. Stengel, I would like to have you look at the chart of the diagram in front of you that has been previously referred to in the course of this trial, the diagram in front of you, and tell us generally whether that appears to be a reasonably accurate and proportionate representation of the layout of Jimmie's Cafe as you recall it? A. Yes, sir.

Q. There are illustrations — there are items marked on that diagram that would seem to indicate a front bar, bar close to the entrance, and a smaller bar behind it. There is some booths, piano, bowling machine and some tables and a juke box at the left hand of the picture.

Do those appear to be reasonably accurate and proportionate in the — proportionate representations of the scene at that time, as you recall it? A. Yes, sir, except I never paid too much attention to this area here (indicating.)

Q. By that you are referring to the south? A. To the south side where the people sit at these tables.

Q. Casey, with that background in mind, that introduction, would you go ahead and, in your own words, state clearly and [p. 164] distinctly to the Court and jury, to the best of your recollection, what occurred from that time forward and I will add a question here and there as it may seem appropriate.

What happened after you were introduced to Agnes — after you met Agnes Morgan and her husband, Kyle Morgan? A. We ordered a beer and we got to talking. Somebody suggested — I don't know which one, which party, one of us or one of them — that we would bowl for a beer on the bowling machine.

Q. Had you previously at any time bowled, been in a bowling game with Mrs. Morgan? A. Yes, sir, about half a dozen times or more.

Q. Had you ever met her husband previous to this time? A. No, this was the first time.

Q. Go ahead. What next occurred, to the best of your recollection? A. Michael Noe and myself teamed up and Agnes Morgan and her husband teamed up and we bowled one game on the machine for a beer and we lost that game so I bought them a beer.

So, we went for a second game and we lost again and I bought them each another beer.

Q. What was Robert Ruff involved in — Was he involved in these contests? A. No. He was sitting at the bar, approximately right around in here, (indicating.) [p. 165]

Q. By that you are indicating the third stool back from the front on the larger bar; is that correct? A. Yes, sir.

Q. That is approximately across from the sketch where it shows the piano; is that correct? A. Yes, sir.

Q. Go ahead. A. After the second game we asked — nobody had any more dimes in their party or our party and I asked the barmaid if she had any more dimes for some change.

At that point she said she did not have any more dimes; that she was out.

Michael Noe went over to here (indicating.)

Q. By here you are referring to the middle booth on the north side? A. Yes, sir. There was four people in the booth and the only one I really paid any attention to in that booth was the barmaid because she would come out, sit down and sit here (indicating.)

Q. There was a lady that worked there that had been sitting in this middle booth? A. Yes, she would come back and forth.

Q. Did you know her name at that time? A. No, sir.

Q. How many people were sitting in that middle booth? [p. 166] A. There were four people.

Q. Did you know any of them? A. No.

Q. Do you have any recollection of ever seeing any of them before that time? A. No, sir.

Q. Go ahead. What happened? A. Michael Noe came back and stated that nobody in the second booth had any dimes, so at that time we quit bowling and I sat down, was still drinking my beer and Michael Noe had a conversation somewhere.

Q. Where you sat down was in relation to Robert Ruff, was where? A. I was to the east side of Robert Ruff and he was one stool over from me. He might have been the second booth. I was in the fourth booth.

Q. Do you mean booth? A. Stool, bar stool.

Q. Therefore at that moment you were sitting to the best of your recollection about the fourth stool from the west end of the larger bar; is that correct? A. Yes, sir.

Q. Your uncle, Robert Ruff, was sitting at the second or third stool from the west end of the larger bar as you recollected; is that what you are saying? [p. 167] A. Yes, sir.

Q. Where was Michael Noe at that time? A. At that time the Morgans had seated themselves somewhere around in here (indicating.)

Q. By that you are meaning to the east of you? A. Yes.

Q. Away from the entrance and opposite — A. The bowling machine.

Q. All right. Continue. A. Michael Noe was standing up talking to them.

Q. Where was he standing in relation to the bowling machine? A. Just about right across from the bowling machine talking to the Morgans.

Q. Were you looking at him or did you see what was happening? A. I just noticed he was talking to them. I didn't pay any attention. I was facing towards the west talking to my uncle Robert Ruff.

Q. Now, state what happened next to the best of your recollection. A. As we were sitting there talking, we were discussing about going home, finishing the beer and going home. At that time I heard a disturbance behind me. I didn't see how the disturbance started but at that point my uncle got up and came around and I turned around and saw Mike and Agnes [p. 168] holding onto each other and then Kyle was behind Michael Noe so that he was sort of in the middle.

Robert Ruff, they were holding and grabbing each other, Robert Ruff pulled Agnes Morgan away from Mike and pushed her over to the piano and held her against the piano over here (indicating.)

Q. What did he appear to be doing at that time? A. He was separating Agnes Morgan from Michael Noe and Kyle Morgan who were also holding onto each other.

Q. What did you next observe? A. I started to go towards Kyle Morgan and Michael Noe. As I was turned around now, facing north, still half in the barstool and half out, as I started to move, I had a slight odor of some type of tear gas in the air but it wasn't very heavy at that particular time.



I noticed a man jumping on or holding onto Robert Ruff's back, had his right arm around his neck and had his left arm around his waist.

Q. Where were these two individuals at that time?

A. There was three of them. Bob was holding Agnes against the piano; this other man was on my uncle's back; had him from behind.

Q. What did you next do? A. I grabbed the gentleman off of my uncle and I pushed him down, pulled him down to the floor over in this area [p. 169] here (indicating.)

Q. By that you are indicating the area just to the east of the larger bar or west of the larger bar; is that correct? A. Yes, sir.

Q. All right. Continue. A. I pulled him down, and on the way down he was continually spraying tear gas into my face.

Q. Was that at close range? A. Yes, sir.

Q. All right. Go ahead. What happened next? A. I got him down on his back and then the tear gas was getting in my face so I stood up. I had him laying down on the floor on his back and I took about two or three kicks at his hand trying to knock the gas or tear gas, whatever he was spraying, out of his hand.

Q. What did you remember observing about where the tear gas was or the can was at that time? A. It seemed like he had it in his left hand over him; me laying on the floor over him like and he spraying upwards towards me.

Q. What did you do next? A. I tilted my head a little bit away from the tear gas and tried to look at him, but keep my eyes out of the way of the tear gas, and I took a few kicks at the can, and whether I kicked it out or it fell or dropped out or what, anyway it [p. 170] stopped.

Q. By this time had Mr. Ruff done anything? A. I noticed — I didn't see him come over but I noticed that Mr. Ruff was standing approximately just by the door, the outside of the door, on the other side of Raymond Belcher.

Q. Did you observe him do anything in connection with Raymond Belcher, touch him in any way or any activity between them? A. No, sir, he was just standing there at that time. I noticed him. He was standing there doing nothing at that time but standing.

Q. Where at that time was the gentleman that had been on you described — had intervened in the argument and pulled the man down or intervened on the back of your uncle; where was he? A. I had him still laying on the floor on his back.

Q. What did you next do? A. I turned around then when I saw my uncle standing there, I figured my uncle could hold the situation here, so I turned around to concentrate back, find out what was going on between the Morgans and Michael Noe, and to see if anybody else was having any involvement over in this area.

Q. What next happened? A. I turned but I never got a chance to see what was going on because as I was turning I heard one shot go off, [p. 171] but by then I had my back to it and the bullet attracted my attention, but before I could turn back around to see what was going on, I got shot in the back and I fell to the floor.

Q. How many shots did you hear altogether at that time? A. Two shots.

Q. Would you describe generally what part of your anatomy the bullet entered your back? A. It entered my back approximately — well, entering it was above the belt on the right side of my back and went upward

to about the center of my back and it stopped in my spine.

Q. How long a period of time, your best estimation, did this whole incident cover up to this point from the time of the difficulty with Noe and Agnes to the shooting? A. It was under a minute, less than a minute, that everything so far that had happened.

Q. Go ahead and state what you recollect happened next. A. I landed on my back; I spun; my legs crossed over each other and was laying on my back when I landed on the floor, so I never got to still look over in this direction.

Q. On that diagram do the two figures there, are they a reasonably accurate representation of where you recollect your body came to rest? A. When I first hit the floor, this is about where I [p. 172] came to rest.

Q. You are indicating the figure as between the two figures on that chart? A. The one furthest.

Q. The one furthest from the door and closest to the larger bar; is that correct? A. East, yes, sir.

Q. As you recollect the situation at that time, is that a reasonably accurate representation of where you saw another body? A. Yes. Robert Ruff, he was more, I believe, straighter toward the north and south but he was reasonably situated like that.

Q. Were you ever unconscious at any time after this shooting? A. No. When I hit the floor, I rolled over on my stomach and I crawled — well, when I rolled over on my stomach, I heard somebody, it was a man, make a statement about somebody is running or run and catch him, something to the effect that he is running away.

At that time I thought was they meant the guy that shot me was running away.

Mr. Crawford: I object, Your Honor.

The Court: Overruled.

Q. (By Mr. Lewis) Go ahead. [p. 173] A. I saw the back of a man. I could not tell who this man was, going out the door but I know it wasn't Michael Noe because Michael Noe wasn't in the bar.

I then crawled over a little bit to my uncle, trying to see what his condition was. I asked him how he was. At that time he was mostly just gasping for air and breathing heavily.

Q. Had you had experience in connecting with shootings and guns? A. Yes, I took classes in tear gas while I was in the service and I was a sniper and a point man over in Vietnam and I was familiar with the fact of getting shot and remaining calm and not to get excited or go into shock or let the bleeding speed up or anything.

Q. How long were you in combat service in Vietnam? A. I spent one year from —

Mr. Crawford: Your Honor, may we approach the bench, please?

The Court: Yes.

(Discussion off the record followed.)

Q. (By Mr. Lewis) Mr. Stengel, in your service in Vietnam, had you received a decoration known as the Purple Heart? A. Yes, sir.

Q. Did that involve injuries sustained in the service? [p. 174] A. Yes, I got hit by a mortar.

Q. Was that a major or a minor injury? A. It was a minor injury. It didn't damage me in any way that I couldn't become healthy again after I got hurt.

Q. Therefore you had some experience and familiarity with injury of this general nature; is that correct? A. Yes. The people next to me would die and I seen other people dying or laying there.

Q. Now, go ahead and describe your best recollec-



tion of what you observed next that occurred. A. I was paying attention to my uncle and he could not respond to me and Agnes Morgan and Kyle Morgan were standing here (indicating.)

Q. You are now pointing to what area, describe it. A. In front of the booth that originally Raymond Belcher and the barmaid and the four people had been sitting. She was screaming more or less hysterical and Kyle was trying to calm her down.

Q. Were both of these — were they upright at that time? A. They were both standing but she said her back hurt her and I suggested that for him to let her sit in the booth. My back, I felt like a balloon from my waist down. I was bloated up and I wasn't sure what I was hit with.

Q. Who else did you observe in the immediate scene at that time? [p. 175] A. I also noticed the barmaid was standing behind the bar facing towards Summit Street and a man going out the front door or standing in the front door.

Q. Go on. After the immediate incident, what do you remember occurred to the best of your recollection? A. I was laying there, I couldn't get any response from my uncle, so I remained calm, got up. I put myself on my elbows; however I was instantly paralyzed. I only crawled a little ways over to my uncle.

I observed everything that was in the bar; Agnes and Kyle Morgan. I will retract everything.

I didn't know where Mr. Compson was but I saw Agnes and Kyle. I saw the barmaid behind the bar facing right at me.

Q. At that time— A. And a man standing in front of the door.

Q. At that time did you know who that man standing in the door was or his name? A. No, sir.

Q. Have you later learned the names of some of these individuals? A. Yes.

Q. Go ahead and state what you next recollect happened after the immediate incident. A. I never saw Mike any more. [p. 176]

Q. Did you see him at all after the time you were shot? A. No, sir, I never saw him from the time I grabbed Raymond Belcher, put him on the floor, I had not noticed him any other time after that.

Q. What did you next observe? A. I next observed the people in the bar, what they were doing. Police officers coming in the bar. I would say generally around four or five, or I don't know in what order they came in, but pretty soon, being a little bar, they were practically just walking all around there.

Q. Do you have an estimation of how much time elapsed between the time you were shot and the arrival of the police officers? A. It was about five, ten minutes.

Q. Go ahead. What next happened? A. Well, eventually somebody came in and put Robert Ruff on a stretcher.

Q. How much time after the arrival of the police officers would you estimate elapsed before he was put on a stretcher? A. I would say perhaps five minutes or something like that.

Q. Go ahead. A. They were getting ready to take him out. I was concerned about myself, but I was also concerned about my uncle so I asked if they could take me also. They told me at that time they didn't have enough room, so I laid in the bar on [p. 177] the floor and they took my uncle out.

Q. What happened. Go ahead. A. Some officers were standing around the bar and nobody was asking me any questions or paying any attention to me, so finally I tugged on one of the officer's pant legs so I felt my

back and felt a hole in my back, but I didn't really want to think that I was shot with a gun. It felt like a tranquilizer or something.

My legs and everything just felt like a balloon. I just didn't feel like I was shot with a bullet. Finally I tugged on one of the officer's pants legs in about this vicinity where the action had taken place across from the middle booth, and I asked the officer at the time if I had been shot with a gun.

At this point he raised my coat shirt up, "Yes, you are shot," and that was all that was ever said to me.

Q. What happened next? A. I laid there for, to me it seemed like a long, long time, but I know I laid there for another five minutes, I would assume, or longer, and I finally got tired and kind of impatient of laying on this floor. I didn't know what my condition was, and finally got to dawning on me that I might die and I — if I was gonna die, I didn't feel like dying on a barroom floor, so I asked the barmaid if they wasn't gonna get me an ambulance, would she at least [p. 178] call my father and have him come down and pick me up and take me to the hospital.

Q. What happened next? Did you get some assistance? A. Eventually they brought a stretcher in and they had it laying right over here (indicating.) I had crawled — my head was now facing this way, but I was crawling over towards my uncle earlier, as I stated, to see about his condition. I know he was hit in the chest.

I finally — he laid it on the floor and I crawled up on the stretcher. They still weren't giving me hardly any assistance. In fact I asked them to at least put my legs up. I told them I couldn't move my legs on the stretcher too and I was face down laying on my chest on the stretcher.

At that time they carried me out, feet first, and I couldn't see what they were putting me in, but I knew it wasn't an ambulance, a regular hospital ambulance.

When they put me in the back of this — I don't know whether it was a paddywagon, is what I thought it was — they put me in feet first and I wouldn't fit so they shuffled me around a little bit, they jerked me about half way out and pushed me back in again, tried to get me to fit, so the second time I managed to fit so they slammed the doors.

Then they started proceeding to take me to a hospital which I assumed that is where they were taking me, they put me in there. Well, it got harder and harder for me to [p. 179] breathe and I wanted to stay conscious. I was in fear that if I did go unconscious, that I wouldn't be able to control my body bleeding or anything else.

Q. Was there someone with you in this vehicle? A. There was somebody sitting, yes, the vehicle was parked here (indicating), this is the front sidewalk. The vehicle was parked here facing this way (indicating.) This is a one-way street going south.

I told at that point after a little while being in there, I mentioned that it was getting harder and harder for me to breathe. I was trying to stay conscious.

I heard a voice of the guy, of a man which I did not see but my face was right up against the doors, and he said, "You will be all right," or "You are all right," and that was the only comments made.

Shortly after that I must have passed out because when I came to, I was laying on my back in Riverside Hospital.

Q. What do you next remember seeing and observ-



ing? A. I woke up, my eyes opened up and I was laying in a hospital. I noticed two police officers standing on the right side of me. They started advising me of my rights. I told them that I had a bullet in me and that when they got the bullet out of me, that I would tell them what they wanted to know.

I didn't know who shot me or anything, or whether it [p. 180] was an officer or anything else, but I told them I wanted the bullet out of me. That was my primary concern of getting the bullet out of me and to save me; then I would tell them what they wanted to know.

Q. What do you next recollect occurred? A. They never harrassed me at any time at that point. They simply left. I laid there and finally my father showed up.

Q. Were you getting any emergency treatment by way of sedatives at that time; do you remember? A. No, I wasn't getting anything.

Q. Go ahead. A. I was just laying there. The pain was now mounting up greater. My father came in and I was trying to ask him what hapepned to Bob and Mike. I said I think Bob and Mike are shot too, which I knew Bob was shot.

I asked about Bob and Mike and he didn't know anything about it.

So then I kept asking for a shot or something, or some kind of medication, a shot of something for the pain.

[p. 238]

### CROSS EXAMINATION

Q. This was a Sunday? A. Yes, sir.

Q. Anybody have anything to drink at your place that evening? A. Not that I know of. I didn't have anything and I didn't see anybody else drink.

Q. If you would, I think you did state to Mr. Lewis in tracing your steps, and he asked you to briefly trace your steps that night, you alluded to going to two bars on direct examination.

Could you go back over that and tell me how many bars did you go to that night? A. Go inside, bars we went inside?

Q. Go inside. A. Counting Jimmie's cafe?

Q. Yes. A. Three.

Q. What was the first bar you went to? A. I don't know the name of it.

Q. Where was that? A. Cleveland Avenue.

Q. Do you know where on Cleveland? [p. 239] A. Near Minnesota.

Q. Is that Jim and Etta's Bar? A. I don't know.

Q. Did you have anything to drink there? A. We drank a beer.

Q. Did you drink a beer? A. Yes, sir.

Q. Did everybody have a beer? A. Yes.

Q. Only one? A. Yes.

Q. So that was the first thing you had had to drink all day? A. Yes.

Q. About what time was that; do you recall? A. Around 11:00, we left around 11:00. We might have left maybe ten til 11 or ten after 11; however long it took to leave my house to get up there. We had a beer then.

Q. Do you recall how long you stayed there? A. About 20 minutes I suppose, 20 to 30 minutes at the longest.

Q. Had anything happened there that you can recall? A. Drank a beer, no, sir, nothing spectacular happened as far as anything.

Q. What did happen, if you can recall? What did you do [p. 240] there in the bar? A. We drank a beer.

Q. Anything else? A. Talked to some of the patrons.

Q. Do you remember who these patrons were? A. No.

Q. Were there any patrons playing pool? A. Yes.

Q. Did you talk with them? A. Yes.

Q. Did Mike talk with them? A. Yes.

Q. Do you remember any of the conversation you may have had? A. Just they wanted to know if we wanted to shoot some pool.

Q. What was the response? A. Mike wanted to but they wanted it—it was for money and Mike wanted to and we talked him out of it.

First of all, he wasn't that good of a pool shooter and he never carried any money hardly with him anyway. To him if he had lost a dollar, it would have been like losing a million bucks, so he wasn't driving. He didn't have much choice but to leave with us.

Q. Did you all leave? [p. 241] A. Yes.

Q. Did you carry your beers out or did you finish them there? A. We drank them right there.

Q. Did you have any conversation with anybody outside the bar? A. One of the players at the pool table still made some remark about playing pool. Mike said he was a better pool player than the other pool player, but it was a—she or a he, I don't know which one. There was a girl and guy on the table—still asked about shooting pool and I said well we were leaving so there was nothing else, nowhere else to go and he said might as well go back inside. I said we are not gonna shoot pool. We are leaving and Mike had to leave because, like I said, he wasn't driving. The other three of us wanted to go.

Q. So, you all left of your own free will to go some place else; is that correct? A. Yes.

Q. Do you recall where you went from there? A. Went to a little tavern on Hudson Street.

Q. By the way, what were you looking for that night; Do you recall what you were looking for, if anything, when you were out? A. People we might know, have a drink. We were all four together, good conversation between ourselves, drinking [p. 242] beer and talking, same thing anybody would do if they went out.

Q. Haven't you testified at one time that you were looking for girls. A. Girls. I also testified guys. I also testified friends, couples. I finally did find a girl, Agnes Morgan.

Q. You went to this bar on Hudson. Did you go in there? A. Yes, we did.

Q. Do you know what you did? A. Yes, we shot a game of bumper pool, the four of us; two of us against the other two, to see who was gonna buy the beer.

Q. How long did you stay there? A. We played a game. We drank the beer. We were there for awhile. The game was pretty slow. We were in no big rush to go anywhere so I don't know, after midnight, I suppose, we left there.

Q. You left after midnight? A. Around in there somewhere. I don't really keep track of time. I knew the bars were gonna be closing fairly soon. That's the only reason I was trying to look at the clock then, but at that particular bar I didn't check.

Q. Did you have anything to drink there? A. Yes, we all had a beer.

Q. Where did you go from there? [p. 243] A. We went to the Ranch. That's another little tavern over on Summit Street and they usually have a band there and everything but there was nothing there on a Sunday



night, no bands, few people drinking, and we didn't feel like going in there.

Q. Why didn't you want to go in there? A. Because we just didn't feel like going in, so there was another little place down there and thought, well, about four doors down, we thought since we are standing here, look it over. I don't know if we all went in or one of us or two of us.

The Court: Casey, I don't want to interrupt your testimony but sitting here and listening closely, I can't hear what you are saying so you are going to have to keep your voice up. (Admonition.)

Q. (By Mr. Crawford) After you left the Ranch, where did you go? A. Went to another little bar about four doors down from the Ranch. We looked in and decided we didn't feel like going in. It was a small place and we left. There might have been one guy drinking a beer and we just decided to go on. We wanted to get closer to the campus.

Q. Where did you go after that? A. Went to Oldfield's, a little tavern out by the Luv-a go-go. That was closed; Oldfield's was open. At this point [p. 244] that's where I went.

Q. Did you go into Oldfield's? A. No.

Q. Do you recall what time you got to Jimmie's? A. When we got there it was around between 1:00 and 1:30 by the time we finally got there.

Q. How did you get there; what cars did you go in? A. To Jimmie's?

Q. Yes. A. I went in—I took my car. I drove.

Q. Had you all been in your car before? A. No.

Q. There were four of you when you got to Oldfield's right? A. Yes.

Q. You had taken two cars there? A. Yes.

Q. Do you recall why you took two cars or couldn't you all fit in one? A. I think four people can fit in a car. I drove my car because I wanted to drive my car, and Dave Jarvis had his car and he wanted to drive his.

Q. When you first arrived at Jimmie's, do you know how many people you saw there when you first arrived? A. I can count them; a half dozen, around in there. [p. 245]

Q. Do you know if there was anybody sitting in the second booth, the one you said that Officer Belcher was in when you arrived? A. I never noticed.

Q. When you got there, you said that you went in and sat down at the bar. Did you order anything to drink? A. Yes, we ordered a beer.

Q. Then when did you start bowling on the bowling machine? A. We started talking for a while to the Morgans and we played the juke box and we started bowling.

Q. Pardon me. A. We met the Morgans; we got to talking for a little while and we put some money in the juke box and played it.

Q. Did you ever put any money in the juke box? A. I myself?

Q. Yes. A. I might have.

Q. Okay. Go ahead. A. Then they mentioned bowling for a beer, was a thing that we did quite often and Mike, and I agreed that we would take them on; see who would buy the beer.

Q. During the bowling game did you ever anticipate any problems would come as a result of the bowling game? A. Except that I was losing.

Q. Other than that. [p. 246] A. No.

Q. You stated that Mike Noe got into some type of argument with Agnes Morgan; is that correct? A. One

of them got into an argument. Both could have got in the argument with him, or he could have gotten into it with her. I don't know.

Q. I am sorry. What do you mean by both. Both could have? A. Yes.

Q. Who do you mean by both? A. It could have been Mike and Kyle and Agnes altogether in an argument. It could have been—I don't know how the argument started or who started it.

Q. You were talking to — A. Bob Ruff.

Q. — Bob Ruff at the time; right? A. Yes.

Q. They were talking in quite a loud voice; weren't they? A. Not particularly, no, not starting off. I wasn't paying any attention to them when Bob and I were talking.

Q. You mean this conversation with Mike and Agnes and possibly Kyle was not loud? A. Not loud enough to distract my attention until after I saw them all standing up when I turned around and saw Bob getting up, no, it wasn't particularly loud. [p. 247]

Q. Did you hear what they said? A. No.

Q. So, it is possible they could have had some conversation and some things could have been said that you never heard; is that correct? A. Yes.

Q. You stated that you stood up. Could you point on the diagram to the place where you stood up and tried to separate Bob, and I believe you said Kyle; is that correct, Bob and Kyle, you tried to separate? A. No, I didn't. I said—Do you want me to go past what has already happened?

The Court: I think before you start on that, we will recess for the noon recess now. I am sorry to interrupt your cross-examination.

Mr. Crawford: Thank you.

The Court: Ladies and gentlemen, we will now take our usual noon recess until 1:30 this afternoon.

While you are in recess, please remember what I told you yesterday about what you must do when you are absent from the jury box:

Don't talk about this case. Don't form or express an opinion on the case.

The clerk will recess the Court until 1:30 this afternoon. [p. 247-A]

THEREUPON, at 12:15 o'clock P.M., Tuesday, June 11, 1974, the hearing was recessed until 1:30 o'clock P.M. of the same day.

[p. 248]

Tuesday Afternoon Session,  
June 11, 1974

### CASEY STENGEL

having been previously duly sworn, resumed the stand and testified further as follows:

### CROSS-EXAMINATION (Cont.)

By Mr. Crawford:

Q. Mr. Stengel, on March 1, 1971 did you appear facially any different than you do today? A. Yes.

Q. How were you different at that time? A. I had a beard.

Mr. Lewis: May we approach the bench?

The Court: Yes.

(Thereupon followed a discussion off the record.)

Q. (By Mr. Crawford) You stated you did look facially different at the time? A. Yes, sir.

Q. You say you had a beard on; is that correct? A. Yes, sir.



Q. Did you or Mr. Ruff or Mr. Noe have any knives or any weapons with you at any time during the evening of February 28, 1971 and March 1, 1971?

[p. 249]

Mr. Lewis: I have a further objection if the Court would care to hear it to that last question.

The Court: Read the question back to me.

(Question read back.)

The Court: Do you object to that question?

Mr. Lewis: Not as it relates to this witness; as to what he had. He may not know.

The Court: I will overrule your objection. This witness may state if he had any weapons on him or if he knew that the other two had weapons on them.

Q. (By Mr. Crawford) What's your answer to the question? A. I said no.

Q. Isn't your testimony here today that neither you nor Mr. Noe or Mr. Ruff ever struck Raymond Belcher?

The Court: Just a minute. I will sustain an objection to that.

Q. (By Mr. Crawford) Did you, Mr. Stengel, at any time during the evening of February 28 or early morning hours of March 1, 1971 ever strike Raymond L. Belcher? A. No.

Q. Did you observe Mr. Ruff at any time during that evening or the early morning hours of March 1, 1971 ever strike Raymond L. Belcher?

The Court: The question is did you see them? [p. 250] Did you observe them striking Belcher?

Q. (By Mr. Crawford) That you observed. A. No, I never observed him striking Belcher.

Q. Did you ever observe Michael Noe strike Raymond L. Belcher in the early morning hours of March 1, 1971? A. No.

Q. Do you recall the shoes that you were wearing that evening? A. Yes.

Q. Could you describe those? A. They were a light tan pair of boots, went up just over the ankle, about this high (indicating).

Q. I show you what's been marked as Joint Exhibit 58 and ask you if you can identify those? A. Yes, I can. Those are the boots I was wearing.

Q. Wearing when? A. March 28, March 1.

Q. February 28? A. Yes, February 28.

Q. And March 1, 1971? A. Yes.

Q. Did you observe the shoes that Mr. Ruff was wearing that evening? A. Yes, I did.

Q. What were they? [p. 251] A. Combat boots or army boots.

Q. They were — A. They wouldn't be known as combat boots but they are army fatigue boots.

Q. I show you what's been marked for purposes of identification as Joint Exhibit 57 and ask you if those are the boots, appear to be the boots that Mr. Ruff was wearing that night? A. Yes, they are the boots that Robert Ruff was wearing, that's correct.

Q. Do you know what Mr. Noe was wearing that evening? A. He was wearing a pair of stetsons.

Q. What is that? A. It is a home made boot.

Q. Let me show you what's been marked for purposes of identification as Joint Exhibit 56 and ask you if you can identify those? A. Yes, a pair of stetsons of Michael Noe.

Mr. Crawford: I have no further questions, Your Honor.

The Court: Do you have any questions on redirect examination, Mr. Lewis?

Mr. Lewis: If the Court please, may I approach the bench?

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Civil Action No. 72-67

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO**

**Eastern Division  
(Title omitted in printing)**

**TESTIMONY OF DWIGHT JOSEPH**

[p. 411]

**Wednesday Afternoon Session,  
June 12, 1974**

**DWIGHT JOSEPH**

**called by the plaintiff pursuant to Rule 43 (b), having  
been first duly sworn, testified as follows:**



## Cross-Examination

By Mr. Lewis:

Q. Will you state your name, please. A. Dwight W. Joseph.

Q. Where do you reside, Mr. Joseph? A. 5096 Sampson Court in Columbus, Ohio.

Q. What is your business or occupation now? A. Retired.

Q. Do you have any occupation at all? A. Not right now.

Q. Do you have any business at all? A. Not right now.

Q. Have you had since the retirement? A. Yes, sir. I had a business that recently went out of business.

[p. 412]

Q. When was that going out of business? A. It is not quite finalized; within the last three or four weeks.

Q. On February 28, 1971 and March 1, 1971, where did you reside? A. I think I was living in Grove City at the time.

Q. On those dates, February 28 and March 1, what was your occupation? A. I was Chief of Police of the City of Columbus.

Q. You had been chief of police how long? A. About a year until that time.

Q. Was your appointment about the time, same time Mr. Hughes was appointed safety director? A. I think Mr. Hughes was appointed safety director in January and I was appointed chief in March or early April.

Q. At that time how much experience; would you relate briefly what your police experience had been up to your appointment as chief? A. I entered the department as a patrolman in 1946, worked several assignments as a uniformed man. I was appointed to sergeant approximately seven years after that. I worked

in several different categories there, turnkey, street sergeant, uniform, and I was promoted to lieutenant approximately three years or four years after that, where I worked in the service subdivision and street lieutenant and head [p. 413] of the tactical squad.

I was promoted to captain where I worked most of the time as a uniformed patrol captain. I was promoted to a deputy chief where I worked in a service subdivision and then had the uniform subdivision.

From there I was promoted to chief of police.

Q. Would it be a fair statement to say that you had had a very broad police background when you were appointed chief? A. I think so, sir.

Q. How long did you hold the office of police chief before your retirement? A. Two years.

Q. What was the date of your retirement? A. It was in March of '72.

Q. Which was about a year after this incident? A. Just about a year, yes.

Q. At the time, February 28th and the early morning of March 1st, was there in effect some orders that certain people should be notified in the event of an unusual incident such as here involved? A. Yes, there was orders to call various people for various things.

Q. Did those orders include an order that you be called? A. In some instances.

Q. Did that order require that you be called in an [p. 414] incident like we have here, off duty policemen killing two? A. It would be a normal procedure for them to call me.

Q. What would the normal procedure be, sir, to call you at any time? A. Usually—this was usually the responsibility of the radio personnel to notify in various cases.

Q. Do you recall this incident erupted?—You have

been in the Courtroom—erupted about 2:00 o'clock or thereabouts on the early morning of March 1st? Do you remember where you were at that time? A. No, sir.

Q. Do you remember of getting a notification by radio? A. No, sir.

Q. When do you remember when you first were aware of this occurrence? A. Not when I was first aware of it unless it was when I came to work the next morning. I don't recall being notified, sir.

Q. Was this an unusual incident in the history of your tenure as a policeman, 24 years? A. Yes, sir, I would say it was somewhat unusual.

Q. Somewhat? A. Yes, sir.

Q. You don't know now why you didn't get immediate notification? [p. 415] A. No, sir, I don't. I suppose there may have been a possibility that they called me and let me know that it happened but I can't recall that.

Q. You have no recollection? A. No, sir.

Q. What is your first recollection about any knowledge of this incident, sir? A. I have very little recollection. I recall that when I came to work there was an investigation going on because of the altercation the night before.

Q. Do you recall who first made you aware of that? A. No, sir, but I would assume that it was because there was some papers on my desk indicating something had happened.

Q. Do you remember what you first did about it; who you last talked to? A. No, sir, I don't.

Q. You don't have any recollection of this unusual incident and what you first did? A. Now you asked two questions there, sir. Which one would you like me to answer?

Q. I will withdraw that. When does your recollection, what period of time do you have a recollection of what you did in connection with this occurrence? A. No, sir, I don't remember exactly what I did about this.

[p. 416]

Q. I don't believe your answer was responsive. I think my question was — would you read it back, please.

(Question read back.)

A. I wouldn't know how to answer that, sir.

Q. (By Mr. Lewis) You recollect now that some time you started to do something about this; don't you, chief? A. Yes, sir, I am sure that there was — I was doing something about this but I would like to explain that there are several divisions within the department, one of them being the detectives subdivision and they would have been doing their work, and at that time we were having all types of high school uprisings and racial problems.

Q. I am sure you had —

The Court: Let him explain. Explain the breakdown of the department, Mr. Joseph.

A. Yes, sir. The department is divided into four subdivisions; service subdivision, investigative subdivision, the administrative subdivision, and the uniform subdivision. Each of these headed by a major.

The majors are or were all quite capable people and I did not involve myself personally in the operations of those departments.

Q. (By Mr. Lewis) Do you have any recollection of ever being at the scene of this incident? A. No, sir.

[p. 417]

Q. Do you have any recollection of your talking personally to any of the other defendants about this



incident? A. Not to any degree, other than there was a meeting at one time at the community relations office at city hall regarding this particular thing.

Q. But I am talking about the time immediately after the incident. A. I am sure I talked to some of these people about it, yes.

Q. But you have no recollection of who they were? A. No, sir.

Q. Do you recollect the direct quotation reported in the story in the *Columbus Dispatch* on March third, two and a half days after this occurrence that you announced that, in substance, the investigation was over; the only thing that remained was to prosecute the man, Mr. Stengel, the man charged; do you remember such a statement? A. No, I don't remember such a statement. I would not doubt that there was such a statement but I don't remember it, sir.

Q. Would you doubt that you said such a statement? A. No, sir.

Q. You believe that you did say such a statement? A. That's possible.

Q. What reports flowed to you as chief in connection [p. 418] with this investigation; do you recollect that? A. No, I don't recollect exactly what reports came to me but I would assume that all of the statements or copies of statements, I know the report from the firearms board came to me. Most of the package would have come to me.

Q. Did you review it? A. Yes, I would say I reviewed it.

Q. Was that a careful review? A. It would not have been a great study of it. It would have been an examination of the materials, a scanning or something.

Q. Do you recall giving your deposition to me some

months back in which you referred to it as a cursory examination? A. Yes, sir.

Q. That was the way you described it at that time. A. Yes, sir.

Q. As chief of the Columbus Police Department at the time and following such an incident, do you feel that it justified something more than a cursory examination of the records and the reports? A. No, sir.

Q. At this time was there in effect a general order regarding the discharge of firearms? A. There was a general regarding firearms, yes, sir. [p. 4119]

Q. Did that general order cover discharge of firearms by policemen in all circumstances? A. Yes, sir.

Q. Whether they are in uniform or out of uniform? A. Yes, sir.

Q. At that time was there also in effect a general order or rule or regulation that at the time of any incident where force was used, that there should be a written report of use of force incidents? A. Yes, sir.

Q. Those were two separate requirements; were they not? A. What were two separate requirements, sir?

Q. It was to be a written report of the discharge of a firearm and a written report involving any use of force by the person involved; was there not? A. Well, there were letters required called use of force letters and these were so far as I am concerned the same as a use of firearm letter; it would have been the same thing. I don't see where we can separate them. They were more or less an explanation of the use of force or firearm.

Q. To your knowledge did Raymond Belcher ever write out in his own handwriting or dictate or sign

either one of this type of report? A. No, sir, he didn't make, so far as I know, he didn't make a use of force report on that. [p. 420]

Q. Was there ever any sworn testimony given any place by Raymond Belcher as far as the reports that he filled in in connection with this incident? A. Was there ever any sworn testimony?

Q. Was he ever put under oath as far as these reports were concerned? A. As far as the department was concerned, put him under oath?

Q. Yes. A. No, sir.

Q. Are you familiar or do you remember reading that item that is marked Exhibit 25 at any time previous to now? A. I remember reading all of the reports or going through all the reports. I suppose this one was among them, sir.

Q. Would you assure yourself by spending a minute, and did you read that particular report; either was that one that you gave the cursory reading to? A. Sir, it would be almost impossible for me to give you an honest answer of whether this report was the report I read at this time. This is quite awhile back. I want to answer you honestly.

I would say that in my opinion this is probably the one I read, yes, sir.

Q. Do you know of more than one report that was ever made of this incident as far as Belcher was concerned either by [p. 421] statement, writing, anything? A. No other than —

Q. By Belcher himself, I am asking, Raymond Belcher? A. No, I think he had to make an assault report when he was at the hospital, but other than that, I don't know of any.

Q. You think he signed an assault report? A. I

didn't say signed anything, sir. I said I think he made a report.

Q. But that's the only thing other than that that you see there? A. Yes, sir.

Q. Would you spend a minute or two and make a little more than a cursory examination of that. A. (Witness complies.)

Q. My question is this: That report purports to be a statement given by Raymond Belcher before the firearms review board. Would you look at that and determine who asked most of the questions or the vast majority of the questions in that report. A. The questions are by Captain or now Major Smith.

Q. He did the bulk of the questioning in that report. A. Yes, sir.

Q. Are there also a couple of questions by the other members of the board? A. I didn't notice any when I went through there. I will [p. 422] go through again.

There is one by Captain Taylor and when Captain Born was asked if he had any questions, he said no.

Wait a minute. Lieutenant Baker asked a couple questions here, and one by Sergeant Hopkins, I believe — two by Sergeant Hopkins.

Q. But, other than that, all the rest of the questions asked in that report were by then Captain Smith; is that correct? A. Yes, sir.

Q. Mr. Joseph, at that time was there in effect a general order about the use of firearms? A. Yes, Sir.

Q. I will hand you what's been marked for purposes of identification as Joint Exhibit 44 A and B and ask you which one of those reports — ask you what they are? A. Is this 44 A 1 or what? Is this 44 A 1 and B 1; sir?

Q. They appear to be A and B to me, 44 A. A. A and



B, all right, sir, I can see it now. 44 A is a General Order 71-14 C, date of issue was July 22, 1971, the effective date is July 22, 1971. It rescinds General Order 70-9D. It is regarding weapons regulations.

Q. 44 B is General Order 70-9 D, date of issue was July 30, 1970, effective date was July 30, 1970, and it rescinds [p. 423] General Order 70-1D. It is also weapons regulations.

Q. So, it is not true that 44 B would be the one that was in effect on March 1st? A. Yes, sir.

Q. I would like to have you examine 44 B that was in effect at that time. I believe it is on Page 4 and see whether you can verify that this language is in there:

"Procedure to be followed when firearm is discharged." Have you located that? A. Yes, sir.

Q. This following language, we have under heading one, "An officer shall be subject to discipline if the shooting of a firearm involves (a) a violation of law by him; (b) a violation of department regulations; (c) poor judgment involving wanton disregard of public safety."

Is that language in that? A. Yes, sir.

Q. Now, I would like to next direct your attention to sub section B. I have just read which says in effect that an officer be subject to discipline if there is a violation of departmental regulations in connection with the firearm discharge. A. Yes, sir.

Q. Is there something in that order about firearms that [p. 424] directs what types of a firearm? A. That may or may not be used?

Q. Yes. A. Yes, sir, "shall not exceed a .38 caliber, shall be inspected, registered and approved by the police range officer, .357 magnum is prohibited."

Then we have a regulation or regulations on the type of ammunition to be used and so forth.

Q. Is part of that regulation suggesting or requiring that the officer carry his official weapon off duty?

A. Carry his official weapon?

Q. Yes. A. No, sir.

Q. Is there something in that regulation? A. It's got about the personal weapon off duty, if you want that read, sir.

Q. Yes. A. It says, "Members of the Division of Police desiring to carry a personal handgun, in addition to their issued revolver, shall request permission through the police range officer. The range officer, after the weapon has been inspected and registered, shall forward the request to the Chief of Police for approval.

Permission may be granted provided the following conditions are met: [p. 425]

(a) the weapon shall be inspected, registered and approved by the police range officer, and

(b) the weapon shall not exceed a .38 caliber and (1) the .357 Magnum is prohibited."

Q. Do you know if the weapon involved in this incident had complied with those regulations? A. I have no reason to disbelieve that they had, sir.

Q. You don't know whether that was checked? A. Not right now without going through some kind of records.

Q. As chief of police do you have some responsibility in connection with discipline? A. Yes, sir.

Q. Would you state what that responsibility was generally. A. It was an ultimate responsibility, of course, like many of the duties of the chief of police, they are subordinated, relegated to other officers down the line.

In other words, discipline should start with the immediate supervisor of any person and then he in

turn, if he feels that further discipline is necessary, handles it through a chain of command.

Q. Do you know if there was ever any disciplinary action of any kind taken involving this incident? A. Not that I know of. Whether a sergeant might say something to somebody about something, which is a form of [p. 426] discipline, that I wouldn't know about.

Q. What are the forms of discipline that could be administered? Would there be a written reprimand? A. It could be an oral reprimand; it could be a written reprimand; it could be such things as working their time off, their days off, written-verbal.

It goes on to where a person can either be suspended or fired.

Q. In your cursory review of this thing, you don't know whether any of those were done? A. I would say nothing like that happened through this thing.

Q. That's the best of your recollection? A. Yes, sir.

Q. Coming over to another part of your regulation. There is an order — Was there an order in effect at that time that officers who were off their regular tour of duty shall carry a weapon? A. Yes, sir.

Q. What was the purpose of that regulation, if you know? A. For a police officer to carry a weapon off duty?

Q. Yes. A. Because they are expected to take action in any type of police or criminal activity 24 hours a day, sir.

Q. Go ahead. [p. 427] A. They would be subject to discipline if they didn't take action.

Q. So, if an officer carrying a gun as required did use that gun, he would be operating under the authority of those regulations? A. Yes, sir.

Q. Did you feel that that was what Raymond

Belcher did in this situation? A. Do I think — what was that?

Q. Did Raymond Belcher act under the authority of those regulations in the incident that's here involved?

A. Yes, sir.

Q. As chief do you approve compensation claims that might be filed in connection with some activity?

A. Ultimately.

The Court: Activity of what? You haven't completed your question, I don't believe.

The question is: As chief of police do you approve claims for compensation? —

Mr. Lewis. He started to answer before I did get to that point.

The Court: For injuries suffered by members of the police department in the course of their official duties?

Mr. Lewis: That was what I was going to say but he started to answer. [p. 428]

Could you answer the question that the Judge stated?

A. Yes, so far as approving the claim; that would be up to someone higher than me as far as approving a claim. I would forward for approval with any recommendation for approval those papers. My signature would be there for that.

Q. (By Mr. Lewis) Do you have any recollection if there was an approval for the claim for compensation by Officer Belcher out of this incident? A. I think there was. I can't recall signing it, but I think there was.

Q. Do you have any recollection of what that claim amounted to? A. No, sir.

Q. The amount of days off or anything of this kind. A. No, sir.

Q. Do you have any recollection of the extent of



any injuries mentioned in that claim? A. Mentioned in the claim?

Q. Yes, sir. A. No, sir.

Q. I hand you what's been marked for purposes of identification as Joint Exhibit 24 A, running through 24 J, and ask you to examine that and then give particular attention to the last page on that which was 24 J; see if you can state that that is. [p. 429] A. (The witness complies.)

Q. Coming back to Page J of that exhibit, will you read the statement that is written in there over the signature that appears to be Raymond Belcher's. A. It is number 3 there: "Describe in detail how accident occurred, giving exact location and any tools, machinery or outside influences involved and the part of body affected."

It is filled in then in handprinting R. Belcher was in Jimmie's Bar, 2338 Summit Street, when three male whites attacked him and were beating, causing abrasions and contusions on the chest, face and neck."

Signed, Raymond L. Belcher.

Q. At the bottom of that is there something signed by some other police officer regarding that claim? A. Sergeant A. J. Malloy. That's the signature of the supervisor and right under that is my signature as the division or department head.

Q. That would therefore seem to indicate that you had signed the approval of that as stated above? A. Yes, sir.

Q. Do you know when you signed that? A. No, sir. It has a date on it, March 2, 1971. I suppose that's the time I signed it. I don't know.

Q. I hand you what's been marked for purposes of identification as Joint Exhibit 42 and ask

you to look at that and see what that is? A. Do you want me to read this?

Q. No. Just state what it is, if you know. A. It is a form apparently from the chief city physician or personnel office of the police department, and it is a notification that Raymond Belcher, marked off on 3-1-71 due to a — well, it says reoccurrence of or result of an injury on duty, which is underscored.

Received on 3-1-71, 2:15 A.M.

The reason for markoff; abrasions, contusions about the head, neck, face, body; attacked by three male subjects written in.

It says that injury on duty — deduct from injury leave. There is some handwriting on it. It says, "Although this officer was 'off duty,' he was in line of duty under circumstances relating to police duties," and the initials under that J.P., and I would imagine that is John Pernard with the Industrial Commission.

Mr. Hughes: Your Honor, I would object to this line of questioning at this time. I don't think it has any relevance to the case. We are happy to stipulate the authenticity of any of these documents that we have been talking about for the last half hour or however long it has been.

The Court: I will overrule your objection at this [p. 431] time.

Q. (By Mr. Lewis) Are you familiar enough with industrial claims to know or to be aware that if an injury involves the necessity of treatment by a private physician, that that private physician submits his bill directly to the Industrial Commission and recites what treatment he gave? A. I don't know what their procedures are.

The Court: Come up.

(Thereupon followed a discussion off the record.)

Q. (By Mr. Lewis) Would you examine the rest of that file and see if there is some further claim set out at some later date in connection with this incident?

A. I think I saw something like that in here. I am not sure. There is a sick or injured certificate of disability dated 3-22-72.

Q. Is there further — Go ahead. A. It's the police form that's made out when someone marks off duty either injured or sick, and this one indicates that Raymond Belcher marked off March 22, 1972 at 9:30 PM because of an old back injury incurred 3-1-71.

Q. Was there anything in that first statement back in J signed on the day that related to a back injury, at the top of J if you please. A. The top of J? I was reading down here; there is extent of injuries down here. [p. 432]

Q. I asked you to read Belcher's statement again over his signature. A. (Witness complies.) No, it just said beating causing abrasions and contusions on the chest, face and neck.

Q. That's all on that point.

Do you remember when this suit was filed? A. What suit?

Q. The suit that's now before the Court? A. Oh, no. I don't know when it was filed; no.

Q. When did you resign as chief; do you remember that date? A. I didn't resign. I retired when my time was in in March.

Q. Of what year? A. '72.

Q. This suit was filed just shortly or before you retired; is that correct? A. I don't know, sir. I have been sued for several million dollars from different organizations during the time I was chief of police and I don't recall which suit came first.

Q. No connection? A. No, sir.

Mr. Lewis: Could I confer? [p. 433]

The Court: Yes.

(Thereupon followed a discussion at Plaintiffs counsel table.)

Q. (By Mr. Lewis) Mr. Joseph, you have been in the courtroom — this is the third day of this case — and you have heard a good bit of detail about moving gun casings. You have heard some details about a witness leaving the scene when other witnesses were there and some other items.

Do you recall any sanctions of any nature that you directed in connection with this incident? A. No., sir.

Q. Do you recall any sanctions or official criticisms of anybody else in connection with this incident, in connection with this incident given to Ray Belcher by anybody else? A. No, sir.

Q. Did you confer with the safety director about this incident, Mr. Hughes? A. When?

Q. At any time. A. I am sure that Mr. Hughes and I talked about it.

Q. Frequently? A. I don't know whether you would say frequently. I am sure we discussed the case. As you said, it was an unusual one, and I am sure we discussed it.

Q. I hand you what's been marked for purposes of [p. 434] identification as Joint Exhibit 74 and ask you to state what that is, sir?

Mr. Hughes: Your Honor, may we approach the bench on this exhibit?

The Court: Yes.

(Thereupon followed a discussion off the record.)

Q. (By Mr. Lewis) On March 3rd when you say you may have made the statement directed to the reporters that the matter was all closed except prosecuting



Stengel, was there still something going on within the department by way of this checking this incident?

A. I am sure there was probably still investigations going on, yes, sir.

Q. Did you at any time ever become aware of what the relationship between Belcher and Bonnie Lohmann was? A. No, sir.

Q. Did you ever become aware of any questions that were subsequently raised about the validity of the testimony of some of the witnesses? A. Questions about the validity?

Q. Validity of the testimony of some of the witnesses that had been interrogated previously? A. I really don't know of anything.

Mr. Lewis: Could I?

(Discussion at plaintiffs counsel table.) [p. 435]

Mr. Lewis: The plaintiff has concluded the examination of this witness.

The Court: Mr. Hughes.

Mr. Hughes: Thank you, Your Honor.

#### Cross-Examination

By Mr. Hughes:

Q. Chief Joseph, during the time you were chief of police of the City of Columbus, were you the highest ranking sworn police officer of the City of Columbus?

A. Yes, sir.

Q. In that capacity was it your responsibility and duty to file criminal charges against a police officer if he violated the law? A. Ultimately, yes, sir.

Q. You did not file charges in this case? A. No, sir.

Q. Why didn't you? A. Because the officer didn't violate the law.

Q. In other words, you came to the opinion there was no violation of law? A. Yes, sir.

Q. Under the charter of the City of Columbus, whose duty was it to file charges against an officer if he was engaged in such serious conduct as to warrant extreme discipline or [p. 436] firing? A. Chief of Police.

Q. What would happen to those charges once they were filed? A. They would be heard before the Director of Public Safety.

Q. What would the option of the safety director at that time be? A. He could initiate punishment or discipline up to and including firing.

Q. Did you file such charges against Officer Belcher? A. No, sir.

Q. Why not? A. Because there was no reason to file charges against Officer Belcher.

Q. Chief, is there a difference between an officer engaging in improper, illegal conduct that would be either a violation of law or regulations as distinguished from violation of some established police practice? A. Yes, there would be quite a bit of difference.

Q. Picking up two shell casings from the ground; would that constitute a violation of law or regulation? A. No, sir, not necessarily.

Q. It would violate a good police practice? A. If in the case of a place where people are milling [p. 437] around and kicking stuff around, it may be to preserve it, keep it from being stepped on or something like that.

Q. Let's assume for a moment the allegations that seem to be being made by counsel for the plaintiff; that it was improper and malicious of some type for Officer Belcher to have picked up these two casings.

Would that be of such a serious nature, assuming the argument that they are making — and I think you understand it — that you would have filed charges against Officer Belcher? A. No, sir, not under those conditions. Had he put them in his pocket and carried them away or tried to conceal them, it may have been different. He turned these over to the first detective that came in.

Q. In order to file charges against an officer and have a hearing before the safety director, did the officer have to either violate rules and regulations or law? A. Yes, sir, one or both.

Q. Would the picking up of the cartridges and turning them over to a detective constitute a violation of law or a violation of regulation? A. Neither.

Q. Counsel has asked of you to examine two particular general orders of the police department. Do you know who the author of those two were? A. The one, the original was I think authored by the [p. 438] director of public safety, and I believe that was Frederick Simon. I didn't read the signature on that. I just know there was a D on the end which indicates director.

The latest one was a C which indicated it was authored by myself.

Q. So, you were the author of the one that was in effect at the time that Officer Belcher was involved in this shooting? A. No, sir. I think that one that I authored was later. There is very little difference in them.

Q. As I understand the regulation, it required that the officer submit a written report when there was either use of force or use of weapon? A. Yes, sir.

Q. Do you consider as the author of one of those reports, the written stenographic report of the inter-

rogation of the officer by Major Smith to constitute such a written report? A. Yes, sir.

Q. After a stenographic report has been given, would there be any reason for him to go back and do a long handwritten report? A. No, sir, that would be superfluous.

Q. Chief, in the tenure that you had as chief of police of the Columbus Police Department, did you have occasion to discipline officers? A. Yes, sir. [p. 439]

Q. Did you have occasion to ask for officers resignations? A. Yes, sir.

Q. Did you have occasion to file charges against officers and have hearings before myself? A. Yes, sir.

Q. As a result of some of those hearings before myself, were officers fired? A. Yes, sir.

Q. I think that part of the allegation of the plaintiffs' case is that as soon as there was an incident involving an officer, some magic mechanism goes into effect.

(Mr. Lewis rising from chair at counsel table.)

The Court: Just a minute. I am going to strike that question insofar as you have gone with it and instruct the jury to disregard what counsel has said.

I won't let you ask the question in another form either, Mr. Hughes. That's one of the big issues in this case.

Q. (By Mr. Hughes) Approximately how many officers during the two years that you were chief of police were actually removed from the force either cause of discipline, initiated by yourself or where you requested resignations in lieu of such discipline?

Mr. Lewis: Object. [p. 440]

The Court: Overruled. A. I don't know the exact number, sir. I do know there was three or four.

Q. (By Mr. Hughes) During this period of time?



The Court: The period of time that Mr. Joseph was Chief of Police?

Q. (By Mr. Hughes) I am sorry, Your Honor. During the period of time that we have in question, the incident early March, late February of 1971.

Could you outline some of the problems that you as chief of police had that were occupying your attention.

Mr. Lewis: Object.

The Court: Sustained.

Q. (By Mr. Hughes) What was the size of the Columbus Police Department in approximately this period of time, March 1, 1971? A. I think we had about 1300 employees. I am not sure.

Q. All of whom you were responsible for ultimately? A. Yes, sir.

Q. As chief of police do you get involved in or did you get involved at this period of time about the incident with much paper work? A. Yes, sir.

Q. As a part of that paper work I think you testified that you gave a cursory reading of the file that was [p. 441] presented to you; is that correct? A. Yes, sir.

Q. Based upon that were you able to form an opinion as to the propriety of the actions of the firearms review board? A. Yes, sir.

Q. What was that opinion? A. That I would accept their opinion that it was a complete and thorough report.

Q. What did you do with the report that came to you from the firearms review board? A. I would have — and I don't know how I did this at the time — I would have approved or marked it recommend, approval for your approval and sent it on to you.

Q. Who were the members of the firearms review

board? A. At that time — Well, for this particular case — was Smith, Taylor and Borne, captains.

Q. Approximately how many captains were there on the police department? A. We had about 12 or 14 at the time. I am not sure.

Q. Is the rank of captain of police a rather high rank? A. Yes, sir.

Q. Most of us think in terms of military rank in comparison to the Army, Navy, etc. In terms of responsibilities of a police department, could you contrast having been in the Army, the degree of responsibility of a police captain [p. 442] versus a captain in the Army? A. I would say that the captain in the police department should rate like a major or in that area of the Army or military.

Q. In other words, it is a very responsible position? A. Yes, sir.

Q. Had you had an opportunity during your career to observe the work of the three captains that sat on this board? A. Yes, sir.

Q. Would you have an opinion as to their competence, intelligence, industry and honesty? A. Yes, sir, I sure do.

Q. Based upon these opinions, and your observations of these officers, did you have an opinion as to the competence of the board itself. A. I had an opinion and a good opinion of the competence of the board. They are all three very well informed, competent officers.

Q. In taking into consideration the Belcher case and the file that came to you, did you to any extent rely upon the fact that they had recommended that the firing was justified in your coming to a similar conclusion? A. Yes, sir.

Q. Did you make an independent investigation apart from either the firearm board or the homicide division? [p. 443] A. The only investigation, type of investigation that may have been carried on any further was that of the internal affairs; might have made a followup, just a summary followup.

Q. Was the investigation of the internal affairs bureau, did it substantiate or contradict the findings of the firearms review board? A. Backed it up.

Mr. Lewis: I object.

The Court: You object to the last question?

Mr. Lewis: Yes.

The Court: Overruled.

Q. (By Mr. Hughes) Is it the function of the chief of police to conduct personal investigations? A. No, sir.

Q. If the chief of police, yourself, at this particular time wanted additional information or additional investigation, how would he undertake that? A. It would be according to the situation, but probably the quickest form would be to go through the internal affairs organization or bureau.

Q. You would not expect the chief of police to go out and interview witnesses? A. No, sir.

Q. Chief, in your experience as a police officer, Columbus police officer, would it have been considered routine or [p. 444] proper for the detectives on the scene to have taken blood or urine samples from mere witnesses who were not suspects? A. No, sir, they wouldn't have been allowed to take samples from them.

Q. Probably would have been illegal? A. Yes, sir.

Q. Would it be normal for the detectives on the scene to have taken photographs of the witnesses at the scene? A. No, that wouldn't have been normal.

Q. Would it have been normal for the detectives on the scene to take written or stenographic statements from the witnesses on the scene rather than at police headquarters? A. No, sir, it wouldn't have been normal.

Q. Do you see anything improper about the fact that Detectives Young and Hardin did not take stenographic or written statements from the witnesses, did not take samples and did not take photographs of those witnesses at the scene? A. There is nothing improper about it. I see it all as proper procedure.

Q. Chief Joseph, as I understand your testimony, you have no independent recollection of discussing this case with any of the defendants at or about the time of the incident; is that correct? A. No, nothing special.

Q. Your testimony is that you probably talked to several [p. 445] of us but you have no independent recollection? A. That's right.

Q. Chief, to use the term that Mr. Taylor used, do you know what is meant by command influence? A. Yes, sir.

Q. Would you as briefly as you can describe for the jury what is meant by command influence? A. I would say that it would be influence by the mere fact that someone is your superior officer.

Q. Did you exercise any command influence over anybody to do anything other than carry on a normal routine and honest investigation? A. No, sir, I didn't.

Q. Are you aware of any command influence being exercised by any of your subordinates? A. No, sir.

Q. Are you aware of the safety director exercising any command influence? A. No, sir.

Q. Did you in any way, by direction or indirection, indicate to anyone in the police department at any



time what the result or what result you desired to come out of this particular investigation? A. No, I did not.

Mr. Hughes: No further questions, Your Honor. [p. 446]

The Court: Mr. Lewis.

Mr. Lewis: Just a couple.

### RECROSS-EXAMINATION

By Mr. Lewis:

Q. I believe you did admit to Mr. Hughes' first or second question that it was your responsibility, and yours alone, to make a determination of whether or not the officer committed a crime; did I understand that correctly? A. Whether he had committed a crime?

Q. Yes; as distinguished from one of the lesser — A. I think the question was different; whether to distinguish a crime. I think anyone could distinguish a crime.

Q. Then maybe I didn't understand Mr. Hughes' question, but I thought it was that there was a duty on you to take some action if you felt that an officer had committed a crime. A. That I will agree with.

Q. That was one responsibility that was on your shoulders? A. That I will agree with.

Q. Well, that would be a much heavier responsibility than getting down to the details of what an officer might then be in violation of regulations; would it not? A. I didn't understand that. I don't know. It is according to what kind of crime is committed.

Q. In this incident there were two deaths under the cir- [p. 447] cumstances of an off duty, out of uniform at least policeman killing two individuals and one seri-

ously permanently injured. Do you think that justified more than a cursory examination of your responsibilities in determining whether crime had been committed? A. A cursory examination? I don't understand that statement, sir.

Q. Cursory, Mr. Joseph, is the phrase that you have used several times here. It is a phrase that you used on your deposition to indicate that you hadn't spent much time with the reports that came up to you through channels; wasn't it? A. No, sir. I don't think it indicated that. I think I indicated to you that I scanned or gave cursory examination to some of the statements and so forth. This did not say that I gave cursory examination to anything nor did it say that I spent very little time on the thing.

Q. Didn't you indicate that you basically relied on these captains that made up the firearms review board? A. I not only relied on the captains that made up the firearms review board; I relied on the detectives in the homicide squad who are highly competent people, well trained and the officers on up from there. I had to rely on those people, sir.

Q. The firearms review board had no authority whatever to arrive at a determination that controlled your responsi- [p. 448] bility about determining whether a crime had been committed by an officer; did it? A. No, that wouldn't have anything to do with whether —

Q. You couldn't delegate that responsibility to them and you did not? A. That's right.

Mr. Lewis: Thank you.

Mr. Hughes: Nothing further, Your Honor.

The Court: You may leave the witness stand, Mr. Joseph.

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**Civil Action No. 72-67**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO**

**Eastern Division  
(Title omitted in printing)**

**TESTIMONY OF JAMES J. HUGHES, JR.**

[p. 453]

**JAMES J. HUGHES, JR.**

called by the plaintiffs under the provisions of Rule 43 (b), having been first duty sworn, testified as follows:

**CROSS-EXAMINATION**

**By Mr. Lewis:**

**Q.** State your name, please. **A.** James Joseph Hughes, Jr.

**Q.** What is your present occupation? **A.** I am an attorney.

**Q.** Do you have a particular position? **A.** I am the elected City Attorney of the City of Columbus, Ohio.

**Q.** Where do you reside, Mr. Hughes? **A.** 2500 Arrowwood Court, Columbus.

**Q.** Where is that located? **A.** It is located in the northeast section of the city known as Forest Park East.

[p. 454]

**Q.** On February 28 and March 1, 1971, what was your position? **A.** I was Director, Department of Public Safety, City of Columbus.

**Q.** As such director, did you have supervisory au-



thority over the police department, City of Columbus?  
A. I did.

Q. Where did you live at that time, sir? A. 987 Grandview Avenue in the City of Grandview Heights.

Q. Do you know, are you able to give an approximation of how far your home at that time was from the scene of this incident on Summit Street. A. I would estimate two miles, sir.

Q. You have heard testimony about requirements of notification of certain police officials and supervisory officials if an unusual incident occurs. Were you included on the list of people that would get notice?  
A. I was.

Q. Do you recollect—Withdraw that.

On March 1, 1971 what was your age? A. My age.

Q. How old were you at the time? A. Thirty-three.

Q. How long had you been safety director for the City of Columbus. [p. 455] A. Since January 1, 1970, so it would be 18 months or so.

Q. January 1, 1970 to March 1, 1971 would be 14 months; wouldn't it? A. Yes, sir.

Q. When did you as safety director first get any notice of the incident that is the subject of this? A. Very shortly after the incident.

Q. By that you mean minutes. A. Yes, sir.

Q. How was that communicated to you? A. By police telephone.

Q. At that time would the regulations require that Chief Joseph receive a notice of this type of incident if he could be found. A. Policy would have been that the chief would have been notified also.

Q. Where were you when you received the notification? A. In bed.

Q. What did you first do after you received this notification? A. On my way into work the following

morning I stopped by the scene which was located a slight deviation from my normal way of getting to work.

Q. Do you recall when we took your deposition just a few weeks ago and is that what you said at that time, or did you [p. 456] not recollect? A. I think at that time I indicated to you I didn't recall whether I went to the scene that night or the next morning. Since that time I have reviewed various documents, talked with various people, and I know that I did not go that night; that I went the next morning on my way in to work.

Q. At the time of that deposition I believe you indicated you had something to do with the early notification of this incident to the coroner. A. No, sir, I did not. I said I had conversations with the coroner before I wrote a final report on this case.

Q. Didn't you say that, just a few weeks ago, that you talked to the coroner early that morning to notify him of the incident by phone? A. No, sir, I don't notify the coroner of an incident. I talked with the coroner that morning about the incident. I did not notify the coroner of the incident.

Q. Who, if anybody, did notify the coroner earlier; do you know? A. No, sir, I don't know who notified the coroner. I know the coroner is notified any time that there is an unusual death.

Q. Is that notice to be immediate. A. I don't know, Mr. Lewis.

[p. 457]

Q. I hand you what's been marked as Joint Exhibit 49. Would you examine that and state what that is. A. The document states that it is a copy of the coroner's report finding of fact and verdict pursuant to Revised Code Sections, etc.

Q. Was that document produced from the police files

in this case in connection with this case? A. Mr. Lewis, I don't know where you got this document.

Q. Mr. Hughes, that's listed as a joint exhibit and you're counsel in this case. How long —

Mr. Crawford: Your Honor, at this point if this line of questioning is going in with regard to him being counsel, I didn't think that was the purpose of his testimony.

The Court: Of course it isn't the purpose of his testimony. I think that you, Mr. Lewis, ought to talk to Mr. Crawford about where this came from and what it is a part of. I think what you are asking is, what you seek to ascertain is whether or not the document that Mr. Hughes is holding in his hand was a part of the whole official investigation of this incident. Is it not?

Mr. Lewis: Yes, and as I understood we had agreed by these joint exhibits that they were authentic and so forth.

The Court: There is not any dispute about the [p. 458] authenticity of this. I think you can easily agree where it came from.

Does that document, Mr. Hughes, form a part of the whole official file on this incident? A. Your Honor, to the best of my knowledge a copy of the coroner's report at some time should have been put into the file. I have no personal knowledge that it ever was.

The Court: Mr. Lewis, if you and defendants' counsel are agreed as to the authenticity of this document, what difference does it make right now how that got into your hand?

Mr. Lewis: None.

The Court: Why don't you withdraw your question then?

Mr. Lewis: That's right.

Q. (By Mr. Lewis) I hand you what's been marked as Joint Exhibit 48. Does that appear to be a copy of the coroner's findings relative to Michael Noe? A. Yes.

Q. At the end of each of those reports, does there appear a signature? A. There appears to be a facsimile stamped signature.

Q. Does there appear a date beside that facsimile stamped signature? A. First day of March 1971.

[p. 459]

Q. That was the date of the incident here? A. Affirmative.

Q. To the best of your recollection when did you first contact or communicate with the coroner? A. To the best of my recollection I had a discussion with the coroner on March 1, 1971. I do not remember whether I called him or he called me. It was a telephone conversation.

Q. Do you remember the nature, anything of the nature of that discussion? A. Yes, sir. If I recollect or remember correctly, we had a general discussion as to the findings in terms of where the bullets went, the path of the bullet, the cause of death and a discussion as to the coroner's opinion as to whether he was ultimately going to rule the activities of Officer Belcher to be justifiable or non justifiable.

At that time the coroner indicated to me that based upon what he knew, he was going to rule that the shootings were justified.

Q. That was the very day of the incident? A. Yes, sir, it was. I believe that I had subsequent phone conversations with the coroner concerning this matter at subsequent dates. I do not know what dates. I do not know the substance of them, but I know that he did not change his opinion and that he did so rule.



Q. Did he, to your knowledge, make any independent [p. 460] investigation of this situation separate from the Columbus Police Department? A. I am not in a position to testify whether he did or did not do so.

Q. Well, he would not have had time to make a very complete investigation in less than 24 hours; would he?

Mr. Crawford: Your Honor, I will object to that question.

Mr. Lewis: I will withdraw it.

The Court: You withdraw the question?

Mr. Lewis: Yes, I am sorry. It was argumentative.

Q. (By Mr. Lewis) Do you remember who accompanied you to the scene? A. No, sir, I do not. I am not even sure whether anybody did accompany me to the scene.

The Court: Are you referring to, Mr. Hughes' going by Jimmie's Cafe on his way to work on the morning of March 1, 1971?

Mr. Lewis: Yes.

Q. (By Mr. Lewis) After you were awakened by this incident at your home, did you have further communications of any kind with any members of the police department before your stopping at Jimmie's Cafe on your way to work in the morning? A. I do not know who the officer was that called me, but [p. 461] my recollection was that it was a supervisor, not a patrolman. My recollection was that at that time, since it was in a bar, I told him that an alcohol test should be made of the officer. I have a recollection of that conversation. I do not have a recollection of who I told that to. I do not have a recollection of having any other telephone conversations that morning.

I do not have a recollection of having any more conversations until I went to Jimmie's Cafe.

Q. Did you meet someone at Jimmie's Cafe that morning? A. At the time I went to Jimmie's Cafe, I am relatively certain that I met Detective Sergeant Pleasant Hopkins and that he was there at that time doing some sort of a followup investigation, and to the best of my recollection—and I am not positive it was Detective Sergeant Hopkins—that basically gave me a rundown of what had happened that night.

Q. Could you fix a time, a reasonable approximation of what time of the morning you met him there?

A. No, sir, I can't. Being a Monday morning, I don't know whether I went in early to work or late to work. It was my way into work.

If it was standard procedure, being somewhat lazy, it would have been probably 9:00 o'clock or a little bit after. I may have gone in early because of the incident, but honestly anywhere between 7:00 and 10:00.

[p. 462]

Q. How long did you discuss the matter at Jimmie's cafe with Sergeant Hopkins? A. For a minimal period of time. I did walk through the bar to get an idea of what the bar looked like so that when I did read or see it at later times, I would have an understanding of the physical location and what it consisted of.

Q. By minimal time, what do you mean? Could you be a little more — A. I would guess the conversation, based upon my present recollection, would have been one or two minutes; a minute conversation.

Q. You had no prearrangement to meet Sergeant Hopkins there? A. No, sir, I did not.

Q. He just happened to be there? A. It is my understanding that he was there on a followup investigation. I did not know that he or any officer would be there.

Q. Did he remain at the scene after you left that scene? A. I can't say. I think I simply interrupted what

he was doing, and I think he went on about his business.

Q. You think he stayed there for further business, whatever it was? A. Based upon my recollection, I don't know. [p. 463] Based upon knowing what I know as having prepared this case, I know that he was there for a longer period of time.

Q. Based on what you know having prepared the case, he had been there for a substantial longer period of time? A. It is my understanding he conducted a thorough investigation of the scene looking for the possible fourth bullet, and that it took him quite a period of time.

Q. That investigation you have just been talking about, do you know if that was conducted after the affidavit that's heretofore been referred to that Sergeant Hopkins filed in the early morning, charging Casey Stengel with the crime of assault with intent to kill? A. I don't know, but as I would reconstruct it, knowing that the arrest took place on the U-10-100 at 10:30, it would be my best estimate that that meeting and conversation took place prior to the filing of the affidavit.

Q. I believe Officer Young testified that it was at 10:00 o'clock that the U-10-100 arrest papers were filed; is that right? A. If I may have the exhibit, I will read from it.

Q. I will hand you this joint exhibit and ask you to read the time listed as the arrest time on that. A. The arrest date is 3-1-71. The arrest time it has 10 and it could be 10:00 o'clock. It has a line drawn through it and slate time says 10:30.

[p. 464]

Q. If Sergeant Hopkins had testified on deposition earlier in this case that he filed the arrest affidavit be-

fore he went back to the scene to check these bullets, you wouldn't be in a position to dispute that?

Mr. McGrath: Your Honor, I am going to object.

Mr. Crawford: Object, Your Honor.

The Court: Just one. I will take objections only from Mr. Crawford.

Mr. Crawford: I understand that, Your Honor. The objection to this is he is referring to this testimony in a deposition of a witness who as yet has not testified in this case. I think it is improper to refer to what testimony might be of this witness.

The Court: Sustained.

Q. (By Mr. Lewis) Do you remember what you did after this two minutes that you were stopped at the scene; what you did next on that morning? A. No, sir, I don't, but I assume that I normally would have gone to my office.

Q. Do you remember your next activity in connection with this incident? A. According to a referral to my calendar of events, I went to a cabinet meeting.

Q. Do you know what time that was scheduled? A. The cabinet meeting was scheduled at 9:30. Whether I [p. 465] got there on time for it or not, I don't know.

Q. Do you remember what you did next in relation to this incident; what participation you may have had? A. Actually, Mr. Lewis, I do not remember independently any other activities that I took in regard to this incident at any particular time.

I know that I had various conversations with the chief of police concerning it. I know that I reviewed the various summaries that were sent to me; the various files that were sent to me, and the various statements that were sent to me.



Q. I believe you indicated you knew you talked to the coroner on that morning; is that correct? A. Yes, sir, I think I have already testified to that.

Q. But you don't remember the time of day or how many calls? A. No sir, I don't, or who initiated them.

Q. Did you at any time discuss this during that day with the firearms review board; do you remember? A. I do not remember. I know that I read their initial report on that date.

Q. What's the next incidence of participation in this incident that you do remember in succeeding days?

A. The next incident that I remember in this particular case was when the chief told me that he was transferring Officer Belcher from being on—walking the beat in the [p. 466] north end to a position of relative safety in the burglary squad rather than leaving him on the street.

Q. Can you place that in point of days? A. I believe that was either that day or the next day, but I can't tell you for sure.

Q. So, Officer Belcher was on duty the next day but in another section; is that correct? A. It is my recollection that he was marked off sick; however it is my recollection further that the intention was that when he did return to work, that he would be put in a different capacity; that he would be removed from the street, which is rather exposed and dangerous under the circumstances with the resulting publicity, and would be brought into the burglary unit that investigated from police headquarters where he would not be in uniform.

Q. Do you know who made that recommendation? A. No, sir, I don't. I know that the chief did it and he just was advising me of the fact that he did it which was his prerogative and right.

Q. What is the next specific incident or specific thing that you remember about this, incident? A. The next thing that I would remember is receiving the complete recommendation from the firearms board concurred in by the chief to me indicating that it was the opinion of the firearms board and the chief that the discharge of the weapon [p. 467] by Officer Belcher under the circumstances was justified and proper.

Q. Do you know when you received that? A. No, sir, but it was a matter of a few days after the incident.

Q. What is the next thing that you remember? A. The next thing that I have an independent recollection of was on the 15th when Mrs. Ruff and Mrs. Juanita—and it's not Ruff but it's close to it.

Q. Roth? A. —asked for an interview with me and it was granted. They came in to see me that day.

Q. Do you know if anybody—how that interview had been arranged, who through? A. Having checked by calendar again, it would appear that it was arranged by my secretary because the appointment is written in in her handwriting as being March 15, 4:45, Juanita Roth, if that's what her name is, and her telephone number and a little notation that they wanted ten minutes of my time.

Q. Was there any advice to you of the nature of that request for time? A. Not to the best of my recollection. It would simply be that they wanted ten minutes of my time, and the appointment was set for 4:45 in the afternoon. [p. 468]

Q. Prior to that appointment, did you make inquiry as to what they wanted to see you about? A. I may have or I may not have. I don't know. Generally my calendar is kept by my secretary and she decides that in many instances.



Q. You have heard Mrs. Ruff, the mother of Robert Ruff and the grandmother of Casey Stangel, testify briefly in this case. Do you recognize that lady as being one of the two? A. No, sir, I am sorry, I don't recognize her as being one of the two, but I have no reason to doubt that she was one of the two.

I know there was an older lady and a lady in chronological date from her somewhat younger. I don't remember whether they were mother and daughter or what. They did come into my office and we did discuss this case.

Q. When they came in, did you have the file of this case on your desk or before you? A. Yes, sir, I did.

Q. Some place along the line you had found out what this ten-minute time request was then, I take it? A. I don't know. The file had been on my desk, I am sure, since the incident because it was pending business and the file by that time had grown to about an inch in thickness.

Whether I know or not what they were to see me about, I don't know, but I certainly would not doubt that I did. [p. 469]

Q. In the regular course of business, the investigation file at that stage was on your desk? A. My file. I receive carbon copies of everything that was done.

Q. You received copies of exhibits and things like that? A. Copies of reports, copies of statements, copies of progress reports, copies of some of the incident reports.

Q. What about exhibits? A. No, sir, I didn't have the boots or the gun or the bullets or anything like that.

Q. What about pictures. A. I had some pictures.

Q. Did you know the time they arrived what they came there to talk to you about? A. I can't testify to

that fact one way or another. It would be probable that I did.

Q. You heard Mrs. Ruff estimate the time of that interview as 20 to 25 minutes. Would you have any disagreement with that? A. No, sir, it was a lengthy interview.

Q. Twenty to 25 minutes you felt was pretty lengthy regarding this situation? A. No, sir, I can't characterize 20 to 25 minutes as lengthy. I will not disagree with the time she indicated. My recollection only is that it was a lengthy interview. [p. 470]

Q. Do you recollect the inquiry of these ladies that an investigation of these shooting deaths be made by you? A. As I remember the interview, it started off very calm, peaceful and quiet.

Basically they wanted—

I remember this as a very unfortunate incident. It is one of the three times that I did lose my temper when I was safety director.

The matter started off in a very calm, peaceful manner. As the lady indicated, a younger woman did most of the questioning.

Basically she asked me to go over the facts and what I knew about the case. I can remember basically discussing it with her, discussing the activities that went on.

We discussed the case, the merits of the case in the course of the investigation for a period of time. At a certain point in the conversation it became more than hostile. At a certain point the young lady, not the elderly lady that testified, but the younger of the two women, who I think was probably senior to myself, indicated to me that she intended to have Officer Belcher, other officers of the Columbus Police



Department, including Lieutenant Belcher, indicted and she made other threats.

At that time I became angry and agitated. Then she testified I believe that I took a picture, and there was [p. 471] a picture in the file of Officer Belcher, showing his condition, showed it to them and told them that as far as I was concerned, that the interview was terminated and the case was closed.

I indicated to them that I did not believe that Officer Belcher should be indicted or that it ever should go to the grand jury or into a Common Pleas Court.

Q. When your deposition was taken here a few weeks ago, you didn't testify as to anything about her asking to have any other police officers involved in this thing besides Raymond Belcher; did you? A. Yes, sir, I did. I said Officer Belcher and others, if I remember my testimony.

Q. Did she name others? A. Yes, sir, she named his brother.

Q. Anybody else? A. I have no specific recollection of anyone else.

Q. At some stage of this interview, did you reach up and push a picture in her face? A. Yes, sir, I did. I was most ungallant and I should not have done so.

Q. Didn't you say first that the case was closed? A. Yes, sir, I am sure that I did, and I think I closed my file in a gesture at the time.

Q. Didn't she then repeat that it wasn't closed as far [p. 472] as she was concerned. A. Yes, sir.

Q. Then didn't you say you will never get it to Court? A. I was referring to an indictment of Officer Belcher.

Q. But your words were, "You will never get it to Court," weren't those your words? A. I can't say ex-

actly that those were or were not my words. She told me that she was going to have Officer Belcher and his brother, Lieutenant Belcher, indicted. I indicated that I did not think so.

Q. Pursuant to that statement, you said, "You will never get it to Court;" didn't you? A. I think I have testified that I was talking about grand jury and Common Pleas Court. Whether I used the exact words, "never get it to Court" or not, I don't know. I would not argue with you if you stated that's what my words were.

Q. That was what your words were just a while back on the deposition; wasn't it? It's just been two or three weeks ago. A. I think that you asked me a leading question and I said I don't disagree with you and I don't now, Mr. Lewis.

Q. You could have? A. I could well have said that. The Court: Let's not chew that any more. That's been established.

Q. (By Mr. Lewis) I think your words were you— [p. 473]

Q. (By Mr. Lewis) I hand you what's been marked for identification as Joint Exhibit 43 and ask you what that is? A. This is a letter written by me as director of the Department of Public Safety to Officer Raymond Belcher through the chief of police:

"Ray: The Board of Inquiry proceedings relative to the incident of March 1, 1971 at Jimmie's Cafe, 2338 Summit Street."

Q. What is the date of that letter, sir? A. The letter is dated April 8, 1971, sir.

Q. I believe you testified in your deposition that this letter of April 8, 1971 represented the actual closing of the case as far as your review of the case was concerned? A. Reviewing, referring to the last line



of the letter it states, "The board of inquiry is discharged and the case is dismissed," so the particular items that were under investigation by the firearms board of inquiry were closed officially with this letter.

Q. So the case wasn't officially closed on March 15th when you had the interview with the lady? A. That is correct.

Q. Calling your attention to the last, next to the last sentence of that summary, does it state as follows; that you resorted to deadly force only after all other courses available to you had been exhausted? [p. 474] A. In part it states that.

Q. Read the entire— A. "The inquiry is hereby closed with the specific finding that your actions were in the line of duty; your weapon was used only in self defense, and that you resorted to deadly force only after all other courses available to you had been exhausted."

Q. At that time had it been resolved where Michael Noe was shot, the location of where he was when the bullet entered his body? A. There were two possibilities and at that time, and even to this date, it has not been determined whether or not he was struck inside or outside the building. I don't think that will ever be resolved.

Q. There was considerable volume of testimony, statements in these reports? A. I am sorry. I didn't hear you.

Q. I will withdraw the question.

Did you ever run across a statement of Officer Belcher that he jumped up from the floor and chased Noe outside? A. Yes, sir, I am aware of that fact.

Q. How would you relate that matter to self defense? A. It is my understanding from the various

statements of Officer Belcher plus my own understanding from preparing [p. 475] this case, that after Officer Belcher and Mr. Noe were outside a struggle ensued.

Q. Did you have the opportunity to look at the coroner's report that indicated where the bullet that was found in Mr. Noe's body entered his body; what the cause of death was? A. I don't remember ever looking at the report. I remember discussing the matter with the doctor. I some times have problems with the medical terms in the various reports. It is my understanding that the bullet entered Mr. Noe's chest in the upper regions of the chest.

Q. Is it your understanding that it actually entered his heart? A. It is my understanding that it did enter the heart area; yes, sir.

Q. Does that help you as to resolving the place of the struggle, whether the struggle was before or after the shooting? A. I have a personal opinion if you want me to state that as to when Mr. Noe was actually shot in the sequence of time based upon that and several other things. If you want me to state that opinion, I would be more than happy to.

Mr. Crawford: Your Honor, any reference I think in this incident and also with Mr. Hughes to information that he has gotten subsequent as a result of preparation of the case I do not think is proper for examination. [p. 476] Any information that he had at the time he reviewed the matter, reviewed the file I think is proper matter. I think the question should be limited to that.

The Court: You are correct, Mr. Crawford, and it will be.

Mr. Taylor: May I approach the bench?



The Court: Yes.

(Thereupon followed a discussion off the record.)

Mr. Lewis: The plaintiffs have completed their examination of this witness.

The Court: Mr. Crawford.

Mr. Crawford: Mr. McGrath is going to cross-examine Mr. Hughes, if you would like to talk with him.

(Thereupon followed a discussion off the record.)

The Court: You may proceed, Mr. McGrath.

### Cross-Examination

By Mr. McGrath:

Q. Mr. Hughes, in regard to the letter which you wrote to Officer Belcher, is that the letter you have in your hand? A. It is.

Q. You have alluded to certain portions of that letter. Would you read the whole letter. A. "Dear Officer Belcher.

I have reviewed the various materials forwarded to me [p. 477] by the chief of police consisting primarily of the statements, summaries, hospital files, progress reports, statements of fact, interim reports, use of force reports and other materials assembled in connection with the above-captioned incident. I have also reviewed the various reports issued by the Bureau of Internal Affairs.

After careful review of the above and following personal discussion with various members of the Board of Inquiry, the chief of police and internal affairs bureau, it is my finding that the discharge of your weapon was proper under the circumstances and that the injuries inflicted thereby were justifiable. Particular note is given to the fact that you attempted

to defend yourself with chemical mace prior to the use of your weapon.

It is further my opinion that at the time you discharged your weapon, you were in great peril, unable to retreat and ultimately could have suffered great bodily harm, or even death, as a result of the unprovoked attack upon you.

The inquiry is hereby closed with a specific finding that your actions were in line of duty; your weapon was used only in self defense, and that you resorted to deadly force only after all other courses available to you had been exhausted.

The Board of Inquiry is discharged and the case is dismissed." [p. 478] S/ James J. Hughes, Jr., Director."

Q. You signed that letter? A. I did, sir.

Q. Why did you reach that conclusion?

The Court: I think that the letter speaks for itself. He has given all the reasons in the letter why he reached that conclusion.

Mr. McGrath: Thank you.

The Court: Do you wish to withdraw the question?

Mr. McGrath: Yes, I will withdraw the question, Your Honor.

Q. (By Mr. McGrath) Mr. Hughes, are you familiar with the firearms review board? A. Yes, sir, I am.

Q. Would you tell what the purpose of that board is and was in March of 1971? A. The firearms review board was a new concoction at this time. It had come about because we had had a series of complaints against the police department on the investigation of the use of firearms.

At that time I asked the president of the Columbus Bar Association to appoint a special committee to

consider the use of force by police officers. They made several recommendations and most important of those was the creation of a board of at least officers of the rank of captain who would investigate [p. 479] any time a policeman discharged his weapon; that they would determine whether or not the discharge of that weapon was proper.

We put this plan into effect some time late in 1970. It would consist of three officers, three captains of the police department. They would consider the facts. They would then render an opinion which would be advisory to the chief as to whether or not the discharge of the weapon was proper.

The board has continued to the present date doing precisely this same thing.

Q. Was this board one which would convene with a formal hearing? A. No, sir, it did not work like a court. Basically it was the three officers would get together in most instances; they would not question witnesses at all. They would review the file.

Mr. McGrath: May I confer with counsel, Your Honor?

The Court: Yes.

(Discussion at defense counsel table.)

Q. (By Mr. McGrath) The firearms review board was set up pursuant to a general order? A. Yes, sir, it was.

Q. Would that have been No. 70-9D? A. From memory I can't testify as to which general order, but it was set up by a general order. [p. 480]

Q. Upon your review of the actions of the firearms review board in regard to this incident, was it your opinion that the firearms review board fulfilled its requirements under that general order? A. Yes, sir, and in fact I wrote a letter of commendation to Cap-

tain Taylor who was chairman of that board and indicated that I was completely satisfied with the way it had operated and suggested that the method that it had used in this particular incident could well serve as a model for future uses of this board, realizing that it was a new concoction at the time.

Q. Mr. Hughes, as safety director, have you ever had occasion to discipline police officers? A. Quite often during that period of time.

Q. Could you estimate any number? A. My estimation would be that I imposed punishment upon police officers or received resignations in lieu of punishment at about a rate of one a month during the period of time that I was safety director.

Q. Did you ever cause an officer to be fired? A. Yes, sir, I did on several occasions.

Q. Mr. Hughes, you have heard testimony during this trial that on approximately July 16, 1971 the plaintiff in this case, Casey Stengel, was arrested. Are you familiar as in your role as safety director with any of the circumstances [p. 481] surrounding the cause of that arrest? A. I am aware of the fact that Mr. Stengel—

The Court: Just come up here, gentlemen.

(Thereupon followed a discussion off the record.)

The Court: Do you wish to withdraw the last question, Mr. McGrath?

Mr. McGrath: Yes, I will withdraw the question, Your Honor. Thank you.

Q. (By Mr. McGrath) Mr. Hughes, in your capacity as safety director for the City of Columbus, were you frequently sued in Court as a result of being safety director and being a necessary defendant to any litigation involving the City of Columbus?

The Court: Do you object?



Mr. Lewis: Beyond the scope.

The Court: Sustained.

Q. (By Mr. McGrath) Mr. Hughes, have you in any way, either immediately after the incident involved in this case or at any time, ever agreed or made suggestions or had discussions with any of the other defendants in this courtroom which were in any way involved in an attempt to whitewash or cover up the truth of the occurrence of this incidence?

Mr. Lewis: Object. It's beyond the scope.

The Court: No, it is not.

If you are objecting, your objection is overruled.

Go ahead and answer that question. [p. 482] A. Thank you, Your Honor.

I certainly did not. If I became aware at any time of any attempt to do so, discipline would have been taken against those officers. Beyond that, it is my opinion that—

The Court: Just a minute. We don't want your opinion, Mr. Hughes. You have said that you never engaged in any way, manner, shape or form in any coverup. That's an adequate answer to the question. A. Thank you, Your Honor.

Q. (By Mr. McGrath) In your capacity as safety director, were you supervisory in terms of the chain of command over the chief of police? A. I was.

Q. And the Division of Police? A. I was.

Q. Did you at any time exercise any command influence over Chief Joseph or anyone in the Columbus Police Department to interfere with or obtain a certain desired result from the investigation of this incident? A. I absolutely did not.

Mr. McGrath: Thank you. I have no further questions, Your Honor.

The Court: Do you have any other questions, Mr. Lewis?

Mr. Lewis: Just a couple.

[p. 483]

### Recross-Examination

By Mr. Lewis: -

Q. Mr. Hughes, did I understand the questions of Mr. McGrath that you wrote the letter to the firearms review board after this investigation and suggested to them having reviewed the statement taken that this should be a model for future investigations? A. That is a fact, sir.

Q. Did you, of course, carefully review the one statement of Raymond Belcher that they took because that would be pretty important; didn't you? A. I did, sir.

Q. As an attorney you are familiar with what a leading question is? A. Yes, sir.

Q. That's a question; leading question is one that suggests the answer to it; is it not? A. Yes, sir, the question you just asked me is a leading question.

Q. However, in the courtroom where you are represented by counsel and you are under cross-examination, the scope of the questions is and the form is controlled by your counsel's objections and by the Court rulings; is it not?

The Court: Come up here, Mr. McGrath and Mr. Lewis. [p. 484]

(Thereupon followed a discussion off the record.)

The Court: Does that conclude your examination, Mr. Lewis?

Mr. Lewis: That concludes my examination.

The Court: You may leave the witness stand, Mr. Hughes.

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